DOCUMENT RESUME

ED 381 943 EC 303 889

TITLE	Final Approved New York State Plan for Education of Students with Disabilities, 1993-1995. The New York State Plan, July 1, 1992 to June 30, 1995, Submitted under the Individuals with Disabilities Education Act (P.L. 101-476). Approved by the Board of Regents and the U.S. Department of Education.
INSTITUTION	New York State Education Dept., Albany. Office for Special Education Services.
PUB DATE	Jan 94
NOTE	98p.
PUB TYPE	Legal/Legislative/Regulatory Materials (090)
EDRS PRICE	MF01/PC04 Plus Postage.
DESCRIPTORS	Compliance (Legal); *Disabilities; Educational Legislation; *Educational Policy; Educational Practices; Elementary Secondary Education; Federal Legislation; State Programs; *State Standards; *Statewide Planning
IDENTIFIERS	Individuals with Disabilities Education Act; *New York

ABSTRACT

This state plan for education of students with disabilities in New York provides information on how the state's provision of special education programs and services in the least restrictive environment complies with federal law and regulation (especially the Individuals with Disabilities Education Act). The report describes planning and program initiatives to be undertaken at the state level during 1993 to 1995. The plan is organized according to the federal checklist provided by the Office of Special Education and Rehabilitative Services. Each section describes how New York State meets the federal requirements specified in the corresponding section of the checklist. The plan covers: assurances, statement of affirmation, right to education policy statement, full educational opportunity goal, child identification, individualized education programs, procedural safeguards, confidentiality of personally identifiable information, least restrictive environment, protection in evaluation procedures, responsibility of the state educational agency, State Comprehensive System of Personnel Development, private schools, recovery of funds, notice and opportunity for hearing on local education agency application, annual evaluation, description of use of Part B (of the Individuals with Disabilities Education Act) funds, additional information, interagency agreements, and personnel standards. (JDD)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED 381 943

EC 303889

FINAL APPROVED NEW YORK STATE PLAN FOR EDUCATION OF STUDENTS WITH DISABILITIES

1993-1995

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
☑ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.
• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

The University of the State of New York
The State Education Department
Office for Special Education Services
Albany, New York 12234

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY
Elizabeth Cossen
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

BEST COPY AVAILABLE

FINAL APPROVED NEW YORK STATE PLAN FOR EDUCATION OF STUDENTS WITH DISABILITIES, 1993-1995

THE NEW YORK STATE PLAN, JULY 1, 1992, TO JUNE 30, 1995, SUBMITTED UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (P.L. 101-476)
Approved by the Board of Regents and the U.S. Department of Education

January 1994

The University of the State of New York
THE STATE EDUCATION DEPARTMENT
Office for Special Education Services
Albany, New York 12234

THE UNIVERSITY OF THE STATE OF NEW YORK

Regents of The University

R. CARLOS CARBALLADA, *Chancellor*, B.S.	Rochester
JORGE L. BATISTA, *Vice Chancellor*, B.A., J.D.	Bronx
WILLARD A. GENRICH, *Chancellor Emeritus*, LL.B.	Buffalo
EMLYN I. GRIFFITH, A.B., J.D	Rome
LOUISE P. MATTEONI, B.A., M.A., Ph.D.	Bayside
J. EDWARD MEYER, B.A., LL.B.	Chappaqua
FLOYD S. LINTON, A.B., M.A., M.P.A.	Miller Place
MIMI LEVIN LIEBER, B.A., M.A.	New York
SHIRLEY C. BROWN, B.A., M.A., Ph.D.	Albany
NORMA GLUCK, B.A., M.S.W.	New York
ADELAIDE L. SANFORD, B.A., M.A., P.D.	Hollis
WALTER COOPER, B.A., Ph.D.	Rochester
CARL T. HAYDEN, A.B., J.D.	Elmira
DIANE O'NEILL MCGIVERN, B.S.N., M.A., Ph.D.	Staten Island
SAUL B. COHEN, B.A., M.A., Ph.D.	New Rochelle
JAMES C. DAWSON, A.A., B.A., M.S., Ph.D.	Peru

President of The University and Commissioner of Education
THOMAS SOBOL

Executive Deputy Commissioner of Education
THOMAS E. SHELDON

Senior Deputy Commissioner for Elementary, Middle and Secondary Education
ARTHUR L. WALTON

Deputy Commissioner for Vocational and Educational Services for Individuals with Disabilities
LAWRENCE C. GLOECKLER

Excutive Coordinator, Office for Special Education Services
THOMAS B. NEVELDINE

The State Education Department does not discriminate on the basis of age, color, religion, creed, disability, marital status, veteran status, national origin, race, gender or sexual orientation in the educational programs and activities which it operates. Portions of this publication can be made available in a variety of formats, including braille, large print or audio tape, upon request. Inquiries concerning this policy of equal opportunity and affirmative action should be referred to the Department's Affirmative Action Officer, NYS Education Department, 89 Washington Avenue, Albany, NY 12234.

CONTENTS

PART 1 PAGE

ASSURANCES vi
INTRODUCTION 1
STATEMENT OF AFFIRMATION 3

PART 2

I. RIGHT TO EDUCATION POLICY STATEMENT 6
II. FULL EDUCATIONAL OPPORTUNITY GOAL 8
III. CHILD IDENTIFICATION 9
IV. INDIVIDUALIZED EDUCATION PROGRAMS 13
V. PROCEDURAL SAFEGUARDS 17
VI. CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION 30
VII. LEAST RESTRICTIVE ENVIRONMENT 33
VIII. PROTECTION IN EVALUATION PROCEDURES 41
IX. RESPONSIBILITY OF STATE EDUCATIONAL AGENCY 45
X. THE STATE COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT (CSPD) 52
XI. PRIVATE SCHOOLS 59
XII. RECOVERY OF FUNDS 62
XIII. NOTICE AND OPPORTUNITY FOR HEARING ON LEA APPLICATION 63
XIV. ANNUAL EVALUATION 64
XV. DESCRIPTION OF USE OF PART B FUNDS 66
XVI. ADDITIONAL INFORMATION 73
XVII. INTERAGENCY AGREEMENTS 75
XVIII. PERSONNEL STANDARDS 78

PART 1

- Submission Statement
- Assurance Statements
- General State Application - EDGAR Assurance
- Certification Required by EDGAR
- Executive Order 12372
- Additional Assurances
  - — Assurance regarding PUB.L. 101-476 and PUB.L. 102-119
  - — Public Participation
  - — Certifications Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements

PART 1—SUBMISSION STATEMENTS AND CERTIFICATIONS

Submission Statement

I, the undersigned authorized official of the State Education Agency of New York State, hereby submit the following State Plan for Fiscal Years 1993-1995 under Part B of the Individuals with Disabilities Education Act.

Thomas E Sheldon — Signature of Authorized Official

6/29/92 — Date

Thomas E. Sheldon, Executive Deputy Commissioner
Typed Name and Title

Assurance Statements

The State of New York makes the following assurances and provisions as required by Part B of the Individuals with Disabilities Education Act (IDEA), as amended (20 U.S.C. 1411-1420):

I. In carrying out the requirements of 20 U.S.C. 1412, procedures are established for consultation with individuals involved in or concerned with the education of children with disabilities, including individuals with disabilities and parents or guardians of children with disabilities. (20 U.S.C. 1412 (7)(A))

II. Programs and procedures will be established to assure that funds received by the State or any of its political subdivisions under any other Federal program, including subpart 2 of part D of Chapter 1 of Title I of the Elementary and Secondary Act of 1965 and Section 202(1) of the Carl D. Perkins Vocational Education Act under which there is specific authority for the provision of assistance for the education of children with disabilities, will be utilized by the State, or any of its political subdivisions, only in a manner consistent with the goal of providing a free appropriate public education for all children with disabilities, except that nothing in this clause shall be construed to limit the specific requirements of the laws governing such Federal programs. (20 U.S.C. 1413 (a)(2))

III. Federal funds made available under the Act: (A) will not be commingled with State funds; and (B) will be so used as to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to children with disabilities and will in no case be used to supplant such Federal, State and local funds, except that, where the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate education, the Secretary may waive in part the requirement of this clause if the Secretary concurs with evidence provided by the State. (20 U.S.C. 1413(a)(9)(B) and 20 U.S.C. 1414(a)(2)(B)(ii))

IV. The State has an advisory panel, appointed by the Governor or any other official authorized under State law to make such appointments, composed of individuals involved in, or concerned with, the education of children with disabilities, including handicapped individuals, teachers, parents or guardians of children with disabilities, State and local officials which: (A) advises the State educational agency of unmet needs within the State in the education of children with disabilities; (B) comments publicly on any rules or regulations proposed for issuance by the State regarding the education of children with disabilities, and the procedures for distribution of funds under the Act; and (C) assists the State in developing and reporting such data and evaluations as may assist the Secretary in the performance of his responsibilities under 20 U.S.C. 1418. (20 U.S.C. 1413(a)(12)) A list of the current

BEST COPY AVAILABLE

members of the Commissioner's Advisory Panel may be obtained by contacting the Office for Special Education Services at (518) 473-7563.

V. The Education of the Handicapped Act, as amended, will not be construed by the State to permit the State to reduce medical or other assistance available under, or to alter the eligibility requirements of, programs funded in whole or in part through Title V (Maternal and Child Health) or Title XIX (Medicaid) of the Social Security Act, with respect to the provision of a free appropriate public education for children with disabilities within the State.

General State Application—EDGAR Assurance

The State educational agency provides assurances that it will comply with the provisions contained in 34 CFR 76.101 and Section 435 of the General Education Provisions Act.

Certifications Required by EDGAR

In accordance with 34 CFR 76.104, the State Educational Agency assures:

1. That the plan is submitted by the State agency that is eligible to submit the plan.
2. That the State agency has authority under State law to perform the functions of the State under the program.
3. That the State legally may carry out each provision of the plan.
4. That all provisions of the plan are consistent with the State law.
5. That a State officer, specified by title in the certification, has authority under State law to receive, hold, and disburse Federal funds made available under the plan.
6. That the State officer who submits this plan, specified by title in the certification, has authority to submit the plan.
7. That the agency that submits the plan has adopted or otherwise formally approved the plan.
8. That the plan is the basis for State operation and administration of the program.

Certification Required by Executive Order #12372

This State certifies that: To the best of our knowledge and belief, data in this State Plan are true and correct, the document has been duly authorized by the governing body of the State education agency and the State will comply with the attached assurances if the State Plan is approved.

The State Plan was submitted to the State's "single point of contact" under Executive order #12372 on date: May 26, 1992.

Public Participation

A draft State Plan was circulated throughout the State on November 8, 1991 which was approximately 142 days prior to the anticipated date of submission to the Secretary. The public was provided at least 30 days to make comment and submit information for planning purposes, extending from November 8, 1991 through January 15, 1992. The draft Plan was forwarded to school districts, statewide organizations, Office for Special Education Services regional offices, Special Education Training and Resource Centers, professionals, and to other persons involved in the education of students with disabilities. During this period, on December 10, 1991, 11 public hearings were conducted simultaneously in accordance with the public notices published twice in the State Register and 9 newspapers having broad regional and State circulation. In addition, focused forums on the section of the State Plan in which New York State's policy on the provision of special education programs and services in the Least Restrictive Environment (LRE) is articulated were held on December 11, 1991, at the same 11 sites as the public hearings. A review of the oral and written testimony received at the hearings and forums was completed and summaries of this information presented to the New

BEST COPY AVAILABLE

York State Board of Regents and Commissioner of Education for their review prior to revising and adopting the State Plan in February. The final State Plan is intended to be submitted to the Office of Special Education and Rehabilitation Services (OSERS) in May 1992. Notice of approval from OSERS will be made in nine newspapers throughout the State. Documentation of public participation is included in the Appendix of this Plan.

Introductory Note Regarding Definitions

The Part B regulations include several definitions. States are not required to include those definitions in their State plan. However, the State must use these terms in a manner which is fully consistent with the requirement of Part B, including definitions and if the State does include a definition of any of these terms, it must be fully consistent with the definition set forth in Part B.

NEW YORK STATE PLAN REQUIREMENTS UNDER PART B OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT AS ADDED BY THE EDUCATION OF THE HANDICAPPED ACT AMENDMENTS OF 1990 (PUB. L. 101-476) AND THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT AMENDMENTS OF 1991 (PUB. L. 102-119)

Assurances Regarding Implementation of These Requirements During Fiscal Year 1993

For purposes of implementing provisions of the Education of the Handicapped Act Amendments of 1990 (Pub. L. 101-476) and the Individuals with Disabilities Education Act Amendments of 1991 (Pub. L 102-119), which amend Part B of the Individuals with Disabilities Education Act (Act) (20 U.S.C. 1401, 1411-1420), the State of New York makes the following assurances:

(1) In accordance with section 612(2) of the Act, throughout the period of the Fiscal Year (FY) 1993 grant award, the State's definition of "children with disabilities," or its equivalent, will include "children with autism" and "children with traumatic brain injury" as separate disability categories under Part B, as specified in section 602(a)(1) of the Act. As soon as possible, but no later than July 1, 1993, the State will make conforming changes to State statutes, regulations, or policies and procedures, as appropriate.

(2) In accordance with the section 612(2) of the Act, throughout the period of the FY 1993 grant award, the State's definition of "children with disabilities," or its equivalent, for children aged 3 through 5 will include "children experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures. . .," in accordance with the criteria specified in section 602(a)(1)(B) of the Act.

(3) In accordance with section 612(2) of the Act, throughout the period of the FY 1993 grant award, the State's definition of "special education, " or its equivalent, will add "instruction in other settings' to the list of settings in which "specially designed instruction" may be provided to children with disabilities, as required by section 602(a)(16) of the Act. As soon as possible, but no later than July 1, 1993, the State will make conforming changes to State statutes, regulations, or policies and procedures, as appropriate.

(4) In accordance with section 612(2) of the Act, throughout the period of the FY 1993 grant award, the State's definition of "related services," or its equivalent, will include "rehabilitation counseling" and "social work services" as eligible related services, as required by section 602(a)(17) of the Act. As soon as possible, but no later than July 1, 1993, the State will make conforming changes to State statutes, regulations, or policies and procedures, as appropriate.

(5) In accordance with section 612(4) of the Act, throughout the period of the FY 1993 grant award, each public agency in the State will implement individualized education programs (IEPs) for students with disabilities, as provided in section 614(a)(5) of the Act, which IEPs include the following provisions, as required by section 602(a)(19) and (a)(20) of the Act:

(A) A statement of needed transition services for students with disabilities beginning at age 16 and each year thereafter, and to the extent appropriate, for students with disabilities 14 years of age or younger;

(B) Where appropriate, a statement of interagency responsibility if a State or local agency, other than the public agency responsible for the student's education, is responsible for providing or paying for needed transition services;

(C) Where a participating agency, other than the public agency responsible for the student's education, has failed to provide agreed upon transition services, a statement that the public agency will reconvene a meeting of the participants on the IEP team to identify alternative strategies to meet the transition objectives in the student's IEP; and

(D) That with respect to IEPs of students with disabilities, "transition services" has the same meaning as the term "transition services," as defined in section 602(a)(19) of the Act.

As soon as possible, but no later than July 1, 1993, the State will make conforming changes to State statutes, regulations or policies and procedures, as appropriate.

(6) In accordance with section 613(a)(3) of the Act, throughout the period of the FY 1993 grant award, the State will implement a comprehensive system of personnel development (CSPD), consistent with the purposes of the Act and with the CSPD described in section 676(b)(8) of Part H of the Act, that shall include—

(A) a description of the procedures and activities the State will undertake to ensure an adequate supply of qualified special education and related services personnel, including—

(i) the development and maintenance of a system for determining, on an annual basis—

(I) the number and type of personnel, including leadership personnel, that are employed in the provision of special education and related services, by area of specialization, including the number of such personnel who are employed on an emergency, provisional, or other basis, who do not hold appropriate State certification or licensure; and

(II) the number and type of personnel, including leadership personnel needed, and a projection of the numbers of such personnel that will be needed in five years, based on projections of individuals to be served, retirement and other leaving of personnel from the field, and other relevant factors;

(ii) the development and maintenance of a system for determining, on an annual basis, the institutions of higher education within the State that are preparing special education and related services personnel, including leadership personnel, by area of specialization, including—

(I) the numbers of students enrolled in such programs, and

(II) the number who graduated with certification or licensure, or with credentials to qualify for certification or licensure, during the past year; and

(iii) the development, updating, and implementation of a plan that—

(I) will address current and projected special education and related services personnel needs, including the need for leadership personnel; and

(II) coordinate and facilitates efforts among State and local educational agencies, institutions of higher education, and professional associations to recruit, prepare, and retain qualified personnel, including personnel from minority backgrounds, and personnel with disabilities; and

(B) a description of the procedures and activities the State will undertake to ensure that all personnel necessary to carry out this part are appropriately and adequately prepared, including—

(i) a system for the continuing education of regular and special education and related services personnel;

(ii) procedures for acquiring and disseminating to teachers, administrators, and related services personnel significant knowledge derived from education research and other sources; and

(iii) procedures for adopting, where appropriate, promising practices, materials, and technology.

As soon as possible, but no later than July 1, 1993, the State will make conforming changes to State statutes, regulations, or policies and procedures, as appropriate.

(7) In accordance with section 613(a)(15) of the Act, throughout the period of the grant award, the State will have in effect policies and procedures relating to the smooth transition for those individuals participating in the early intervention program assisted under Part H of the Act who will participate in

preschool programs assisted under Part B of the Act, including a method of ensuring that when a child turns age 3, an individualized education program, or, if consistent with sections 614(A)(5) and 677(D), an individualized family service plan, has been developed and is being implemented by such child's third birthday. As soon as possible, but no later than July 1, 1993, the State will make conforming changes to State statutes, regulations, or policies and procedures, as appropriate.

(8) In accordance with section 612(4) of the Act, throughout the period of the grant award, for each child with a disability aged 3 through 5, if consistent with State policy and at the discretion of the local educational agency or intermediate educational unit, and with the concurrence of the parents or guardian, each local educational agency or intermediate educational unit in the State, by the beginning of each school year, will establish an individualized education program for each child with a disability or an individualized family service plan described in section 677(d), and will then review and, if appropriate, revise its provisions periodically, but not less than annually. As soon as possible, but no later than July 1, 1993, the State will make conforming changes to State statutes, regulations, or policies and procedures, as appropriate.

(9) Throughout the period of the FY 1993 grant award, the State will comply with all requirements of Part B of the Act, including and Departmental regulations amending 34 CFR Part 300 that became final and effective by the date on which your State received its FY 1993 grant award.

Thomas E. Sheldon, Executive Deputy Commissioner
Typed Name and Title of Authorized State Official

Thomas E Sheldon 6/29/92

Signature Date

Public Participation Requirements of the General Education Provisions Act Related to Part B State Plans

The public participation requirements at 34 CFR 300.280—300.284 apply to the State Plans submitted under Part B.[1] In addition, States are reminded that in the general application required under Section 435 of the General Education Provisions Act (GEPA), 20 U.S.C. §1232d, which applies to both Part B and Section 619, the State has assured:

> that the State will provide reasonable opportunities for the participation by local agencies, representatives of the class of individuals affected by each program and other interested institutions, organizations, and individuals in the planning for the operation of each program, including:
>
> (A) the State will consult with relevant advisory committees, local agencies, interest groups, and experienced professionals in the development of program plans required by statute;
>
> (B) the State will publish each proposed plan, in a manner that will ensure circulation throughout the State at least 60 days prior to the date on which the plan is submitted to the Secretary or on which the Plan becomes effective, whichever occurs earlier, with an opportunity for public comments on such plan to be accepted for at least 30 days;
>
> (C) the State will hold public hearings on the proposed Plans if required by the Secretary by regulation; and
>
> (D) the State will provide an opportunity for interested agencies, organizations, and individuals to suggest improvements in the administration of the program and to allege that there has been a failure by any entity to comply with applicable statutes and regulations.

20 U.S.C. 1232d(b)(7)

Note: States are required to meet the public participation requirements under Part B *and* GEPA both for (1) changes in State Plans required by this Department, and (2) relevant changes that the State makes on its own (e.g., extending the FAPE mandate under Part B to include children ages 3 through 5). 34 CFR 76.140—76.142.

[1] The public participation requirements at 34 CFR 300.280 – 300.284 do not apply to Section 619. Thus, it is permissive, but not required, for a State to hold public hearings on its Preschool Grants Application.

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Section 85.105 and 85.110 –

A. The applicant certifices that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period proceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented as 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.6120 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(a) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the indentification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted–

(1) Taking appropriate personnel action against such an employee, up to an including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local heal, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE
Thomas E Shelden	6/29/92

CIVIL RIGHTS CERTIFICATE

Assurance of Compliance
with Title VI of the Civil Rights Act of 1964,
Section 504 of the Rehabilitation Act of 1973,
Title IX of the Education Amendments of 1972,
the Age Discrimination Act of 1975,
and the Americans with Disabilities Act of 1990

The applicant provides this assurance in consideration of and for the purpose of obtaining Federal grants, loans, contracts (except contracts of insurance or guaranty), property, discounts, or other Federal financial assistance to education programs or activities from the Department of Education.

The applicant assures that it will comply with:

1. Title VI of the Civil Rights Act of 1964, as amended, 42 USC 2000d et seq., which prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving Federal financial assistance.
2. Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC 794, which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance.
3. Title IX of the Education Amendments of 1972, as amended, 20 USC 1681 et seq., which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance.
4. The Age Discrimination Act of 1975, as amended, 42 USC 6101 et seq., which prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance.
5. The Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disability by private employers and providers of public accommodations.
6. All regulations, guidelines, and standards lawfully adopted under the above statutes by the United States Department of Education.

The applicant agrees that compliance with this Assurance constitutes a condition of continued receipt of Federal financial assistance, and that it is binding upon the applicant, its successors, transferees, and assignees for the period during which such assistance is provided. The applicant further assures that all contractors, subcontractors, subgrantees or others with whom it arranges to provide services or benefits to its students or employees in connection with its education programs or activities do not discriminate regarding the above statutes, regulations, guidelines, and standards against those students or employees. In the event of failure to comply, the applicant understands that assistance can be terminated and the applicant denied the right to receive further assistance. The applicant also understands that the Department of Education may, at its discretion, seek a court order requiring compliance with the terms of the Assurance or seek other appropriate judicial relief. The person or persons whose signature(s) appear(s) below is/are authorized to sign this application and to commit the applicant to the above provisions.

6/29/92
Date

Thomas E Sheldon
Authorized Official(s)

New York State Education Department
Name of Applicant or Recipient

Room 125, Education Building
Street

Albany, New York 12234
City, State, Zip Code

THE NEW YORK STATE PLAN FOR EDUCATION OF STUDENTS WITH DISABILITIES, 1993-1995

Introduction

The New York State Plan for Education of Students with Disabilities, 1993-1995 provides information on how the system established by the New York State Education Department for the provision of special education programs and services in the least restrictive environment is consistent with requirements included in the Individuals with Disabilities Education Act (IDEA) and Part 300 of the Code of Federal Regulations. Further, this information is fully sufficient for the Office for Special Education and Rehabilitative Services, United States Department of Education, to determine that New York State is in compliance with Federal law and regulation. Furthermore, it serves to communicate to the constituents of this State information regarding the comprehensiveness and quality of the State's special education system.

In addition to developing a document which demonstrates compliance with Federal requirements, the State Plan describes the planning and program initiatives that will be undertaken at the State level regarding the provision of special education programs and services during the next State Plan cycle (1993-1995).

In New York State, the Board of Regents and the State Education Department have approved *A New Compact for Learning* which is a comprehensive document to guide reform within the educational system. The Compact, which asserts that "all children can learn," will be implemented through the collaborative efforts of parents, educators, State and local governments, colleges, libraries, museums, social service agencies, and community groups to raise and educate our children better. The Compact is central to special education changes and ensures that special education is part of, not separate from, the long-term plans to restructure the educational system.

This Plan is organized according to the Federal checklist provided by the Office for Special Education and Rehabilitation Services to assist states in the development of state plans. The checklist is based upon specific requirements included in Part B of the Individuals with Disabilities Education Act.

Each section of the State Plan describes how New York State meets the Federal requirements specified in the corresponding section of the checklist. Specific citations of State law, regulation or policy, are included to support compliance with the requirements. Tables and charts are provided, where appropriate, to substantiate compliance with these requirements.

In addition, some sections include information regarding New York State initiatives which will be undertaken during the State Plan years of 1993-1995 to enhance the delivery system of special education services and programs to students with disabilities.

Appendix A of the *State Plan* includes a comprehensive collection of the laws, regulations, and policies cited throughout the document. Appendix A is organized sequentially according to Federal laws and regulations, State laws and regulations, and policies and related documents. Because the Appendix is so extensive it is not possible to print an Appendix for each *State Plan* which is disseminated. Therefore, the full compilation of Appendix A material is available at the Regional and Central Offices of the Office for Special Education Services for review upon request. The addresses of the Regional and Central Offices of OSES are on page 2.

An information checklist of the laws and regulations cited in the State Plan may be obtained by contacting the Office for Special Education Services at (518) 473-7563. Upon resubmission of the checklist, copies of the documents may be obtained at 25 cents a page.

To ensure that this State Plan accurately reflects current procedures for the identification of students with disabilities and for the provision of appropriate special education programs and services in the least restrictive environment, all interested individuals and groups were given an opportunity to provide oral and/or written testimony at open public hearings conducted in 11 regions of New York State on December 10, 1991. The sites for the hearings are listed on page 2 of this section. Any person who was not able to attend a hearing, but who wished to provide comments or suggestions regarding this document, had an opportunity to submit such information directly to the State

Education Department, Office for Special Education Services (OSES) by January 15, 1992. All comments and suggestions were carefully considered when making appropriate revisions to the plan. This document may also be revised to the extent Federal or State laws and regulations are enacted which affect the State's special education system.

The New York State Plan for Education of Students with Disabilities has been developed according to most recent Federal requirements and information. The *State Plan* will be reviewed by the Office for Special Education and Rehabilitative Services and amended pending any changes required by their review.

Questions and comments regarding the State Plan may be forwarded to:

The New York State Education Department
Office for Special Education Services
Division of Program Development
Room 1069, Education Building Addition
Albany, NY 12234
ATTN: State Plan

REGION I
New York State Education Department
Richmond Avenue
Batavia, NY 14020—1499
(716) 344-2112

REGION III
New York State Education Department
Room 9-C-49 CEC
Empire State Plaza
Albany, NY 12230
(518) 474-5356

REGION IV
New York State Education Department
55 Hanson Place
Brooklyn, NY 11217 -1580
(718) 260-2705

REGION V
New York State Education Department
Salisbury Center
Valentines and The Plain Roads
P.O. Box 1034
Westbury, NY 11590—0113
(516) 997-8700, Ext. 245

REGION VI
New York State Education Department
1950 Edgewater Street
Yorktown Heights, NY 10598—4325
(914) 245-0010

CENTRAL OFFICE
New York State Education Department
Office for Special Education Services
Room 1073 EBA
Washington Avenue
Albany, NY 12234
(518) 474-5548

STATE PLAN HEARING SITES

Region	Location
Albany	Sheraton Inn 200 Wolf Road Albany, NY 12208
Buffalo	Ramada Renaissance 4243 Genesee Street Buffalo, NY 14225
Rochester	Holiday Inn 911 Brooks Avenue Rochester, NY 14624
Syracuse	Holiday Inn/Downtown 701 East Genesee Street Syracuse, NY 13210
Binghamton	Ramada Inn 65 Front Street Binghamton, NY 13905
Nassau	BOCES Salisbury Center Valentines Road & Plain Road Westbury, NY 11590
Suffolk	BOCES II Sherwood Corporation Center 15 Andrea Drive Holbrook, NY 11741
Lake Placid	Holiday Inn One Olympic Drive Lake Placid, NY 12946
Fishkill	Holiday Inn Route 9 & I-84 Fishkill, NY 12524
NYC-Manhattan	Hotel Pennsylvania 401 Seventh Avenue New York, NY 10001
NYC-Queens	Marriott Hotel 102-05 Ditmars Boulevard East Elmhurst, NY 11369

A STATEMENT OF AFFIRMATION

The New York State Education Department has adopted *A New Compact for Learning* in order to improve the ability of the education system to meet the needs of all students, including those with disabilities. By acting on the principles endorsed by the Compact, the Department intends to provide increased support to local districts and schools and all of their students. In planning for the implementation of *A New Compact for Learning*, the New York State Education Department has undergone a reorganization. The new structure will: allow improved technical assistance to school districts, children, families and their communities; establish a management structure that provides authority commensurate with responsibility while ensuring accountability; provide a framework for improved inter- and intra-agency coordination and collaboration; and provide an operational context for developing, implementing and evaluating policy and program activities related to New York State's *A New Compact for Learning*. The New York State Board of Regents, as part of *A New Compact for Learning*, has revised and reendorsed the following goals for educating all students in the State:

Learning Goals Held by the Board of Regents for All Children in New York State

- Each student will master communication and computation skills as a foundation to:
  - — Think logically and creatively.
  - — Apply reasoning skills to issues and problems.
  - — Comprehend written, spoken, and visual presentations in various media.
  - — Speak, listen to, read, and write clearly and effectively in English.
  - — Perform basic mathematical calculations.
  - — Speak, listen to, read, and write at least one language other than English.
  - — Use current and developing technologies for academic and occupational pursuits.
  - — Determine what information is needed for particular purposes and be able to use libraries and other resources to acquire, organize, and use that information for those purposes.
- Each student will be able to apply methods of inquiry and knowledge learned through the following disciplines and use the methods and knowledge in interdisciplinary applications:
  - — English language arts
  - — Science, mathematics, and technology
  - — History and social science
  - — Arts and humanities
  - — Language and literature in at least one language other than English
  - — Technical and occupational studies
  - — Physical education, health, and home economics
- Each student will acquire knowledge, understanding and appreciation of the artistic, cultural, and intellectual accomplishments of civilization, and develop the skills to express personal artistic talents. Areas include:
  - — Ways to develop knowledge and appreciation of the arts
  - — Aesthetic judgments and the ability to apply them to works of art
  - — Ability to use cultural resources of museums, libraries, theaters, historic sites, and performing arts groups
  - — Ability to produce or perform works in at least one major art form
  - — Materials, media, and history of major art forms
  - — Understanding of the diversity of cultural heritages
- Each student will acquire and be able to apply knowledge about political, economic, and social institutions and procedures in this country and other countries. Included are:
  - — Political, economic, and social processes and policies in the United States at national, State, and local levels
  - — Political, economic, and social institutions and procedures in various nations; ability to compare the operation of such institutions; and understanding of the international interdependence of political, economic, social, cultural, and environmental systems
  - — Roles and responsibilities the student will assume as an adult, including those of parent, home manager, family member, worker, learner, consumer, and citizen
  - — Understanding of the institution of the "family," respect for its function, diversity, and variety of form, and the need to balance work and family in a bias-free democratic society
- Each student will respect and practice basic civic values and acquire and use the skills, knowledge, understanding, and attitudes necessary to participate in democratic self-government. Included are:
  - — Understanding and acceptance of the values of justice, honesty, self-discipline, due process, equality, and majority rule with respect for minority rights
  - — Respect for self, others, and property as integral to a self-governing, democratic society
  - — Ability to apply reasoning skills and the process of democratic government to resolve societal problems and disputes
- Each student will develop the ability to understand, appreciate, and cooperate with people of different race, sex, ability, cultural heritage, national origin, religion, and political, economic, and social background, and to understand and appreciate their values, beliefs, and attitudes.

- Each student will acquire knowledge of the ecological consequences of choices in the use of the environment and natural resources.
- Each student will be prepared to enter upon postsecondary education and/or career-level employment at graduation from high school. Included are:
  - The interpersonal, organizational, and personal skills needed to work as a group member
  - The ability to use the skills of decision making, problem solving, and resource management
  - An understanding of ethical behavior and the importance of values
  - The ability to acquire and use the knowledge and skill to manage and lead satisfying personal lives and contribute to the common good
- Each student will develop knowledge, skills, and attitudes which will enhance personal life management, promote positive parenting skills, and will enable functioning effectively in a democratic society. Included are:
  - Self-esteem
  - Ability to maintain physical, mental, and emotional health
  - Understanding of the ill effects of alcohol, tobacco, and other drugs and of other practices dangerous to health
  - Basic skills for living, decision making, problem solving, and managing personal resources to attain goals
  - Understanding of the multiple roles adults assume, and the rights and responsibilities of those roles
  - Basic skills for parenting and child development
- Each student will develop a commitment to lifetime learning and constructive use of such learning, with the capacity for undertaking new studies, synthesizing new knowledge and experience with the known, refining the ability to judge, and applying skills needed to take ethical advantage of technological advances.

The conceptual framework of the *Compact* rests on a foundation of key principles described below:

The Principles of *A New Compact for Learning*

- **All children can learn.**
  All children are capable of learning and contributing to society. No child should be permitted to fail.
- **Focus on results.**
  Our mission is not to keep school—it is to see that children learn. The energies of all participants should be focused on achieving the desired outcomes. Accountability does not end with following established rules and procedures; its essence is found in results.
- **Aim for mastery.**
  Minimum competence, while necessary, is not enough. Successful participation in our society demands much more. All children are entitled to a curriculum, to instructional methods, and to adult expectations which challenge them to perform at their best, and help them to become truly proficient in knowledge and skill.
- **Provide the means.**
  Every child in New York State is entitled to the resources necessary to provide the sound, basic education which the State Constitution requires. The requirement is not equality of input, but equity of outcome.
- **Provide authority with accountability.**
  Each participant in the educational system should have the authority needed to discharge effectively his or her responsibility, and each participant should be held accountable for achieving the desired results. This principle applies to all participants in the educational process—students, parents, teachers, counselors, librarians, administrators, Board of Education members, and others.
- **Reward success and remedy failure.**
  Achievement of desired results by individuals and groups should be rewarded. The existing system tends to reward those who make no waves. The times demand a system which rewards those who take risks to produce results.
  Occasional failure in a large and diverse system is probably unavoidable. However, failure should not be permitted to persist. When it occurs, with either individuals or groups, help should be provided and the situation changed.

The learning goals and the principles directing *A New Compact for Learning* ensure comprehensive and equitable educational opportunities for all children, including those with disabilities. The State Plan demonstrates how the special educational system is evolving in a direction which assures that students with disabilities will have access to and successfully participate in the full range of educational opportunities available to all students in New York State. A copy of *A New Compact for Learning* may be obtained by contacting the New York State Education Department, Room 115 EB, Albany, NY 12234, or by calling (518) 474-6569.

PART 2

Substantive Requirements

I. RIGHT TO EDUCATION POLICY STATEMENT

The State of New York guarantees the right to a free appropriate public education (FAPE) and full educational opportunity in the least restrictive educational environment to all New York State students with disabilities ages 3 through 21 which includes all children whose parents nonetheless elect to place their child in a private school. A student with a disability means a person age 5 through 21, who is entitled to attend public schools pursuant to Section 3202 of Education Law or a child age 3 through 5, who is entitled to services pursuant to Section 4410 of Education Law and who, because of mental, physical or emotional reasons, can only receive appropriate educational opportunities from a program of special education. Such term does not include a student whose educational needs are due primarily to unfamiliarity with the English language or to environmental, cultural or economic factors. (NY Educ L Sec 4401) The Board of Education (BOE) or trustees of each school district is required to furnish suitable educational opportunities for students with disabilities through the special services or programs listed in Sections 4401 or 4410 of Education Law. A free and appropriate education in the least restrictive environment for children residing in child care institutions is guaranteed through Sections 4001 to 4006 of Education Law. The needs of the individual student shall determine which services must be rendered. (NY Educ L Sec 4402(2)(a)) Educational settings shall meet standards adopted by the State Board of Regents and specified in New York State Education Law and the Regulations of the Commissioner of Education. It is further affirmed through Sections 3202(1) and 4402(1) of Education Law that this policy applies to all public agencies in the State that provide education to students with disabilities who(se):

- have not attained age 21 prior to September first and who are entitled to attend public schools pursuant to Section 3202 of the Education Law, and who, because of mental, physical or emotional reasons, have been identified as having an educational disability (descriptions of disabilities are located in NY Educ L Sec 3602(19) and 4401(1) and 8NYCRR 200.1) and can receive appropriate educational opportunities from special services and programs approved by the State Education Department (SED); (8NYCRR 200.1(cc) and (ff)) Special education is defined as specially designed individualized or group instruction or special services or programs provided at no cost to the parent to meet the individual needs of students with disabilities. Such instruction includes, but is not limited to that conducted in classrooms, homes, hopsitals, institutions, and in other settings. (8NYCRR 200.1 (kk))
- shall have access to the full range of programs and services set forth in the regulations to the extent that such programs and services are appropriate to such students' special educational needs; (8NYCRR 100.2(s)(1)) and (NY Educ L Sec 4401(1))
- location, identification, evaluation and placement is the responsibility of the SED and is delegated to each local school district Board of Education (BOE) and to each other State agency responsible for the care of children or the operation of a school and is conducted by completing the following requirements:
  - a required record of census; (NY Educ L Secs 3240, 3241, 3242, and 4403(1)) and (8NYCRR 200.2)
  - a mandated screening of all new entrants to the public school system and of those students who perform below a minimum standard on statewide tests. School district staff are responsible for referring all suspected students with a disability to the Committee on Special Education (CSE) within 15 calendar days after the screening; (8NYCRR 117)
  - a referral of a student thought to have a disability to a district's Committee on Preschool Special Education (CPSE) or CSE is another means for identifying students with disabilities; (NY Educ L Sec 4402) and (8NYCRR 200.4)
  - a register of all students with a disability is required to be kept by school districts and maintained by CPSEs and CSEs (8NYCRR 200.2); and
  - a summary report is submitted to the SED by December

15 of each year which is the basis for allocation of Individuals with Disabilities Education Act (IDEA), Part B funds and is maintained by SED in a computer database.

- special education programs and services shall be provided according to the needs of each student with a disability and shall be described in an approved individualized education program (IEP) which is intended to:
  - describe the district's annual plan to provide a student with a disability a free appropriate public education in the least restrictive environment;
  - guide the student's teachers and parents in meeting the individual needs of the student and assessing progress toward specific learning goals;
  - be reviewed and revised as needed, but at least annually; and
  - be in effect at the beginning of each school year. (8NYCRR 200.4)
- conduct, discipline and suspension procedures are set forth under the following guidelines:
  - each school must have a school discipline policy which addresses appropriate school behaviors and also addresses students who have a disability (8NYCRR 100.2);
  - a school principal, if authorized by a BOE, may suspend a student for up to five days, but must, upon request, give the student and person in parental relation the opportunity for an informal conference (NY Educ L Sec 3214);
  - a student, including one with a disability, may not be suspended by a BOE or superintendent of schools for more than five days without being afforded the right to a hearing (NY Educ L Sec 3214);
  - if a student with a disability violates the conduct and discipline policy, and is suspended for 10 consecutive days or more, or the aggregate of 10 days over the school year, this will be regarded as a change of placement and the student must be referred back to the CSE for review of the student's program and placement to determine if the behavior in question is related to the student's disability and requires notice of the procedural safeguards under the IDEA, (*School Executive's Bulletin*, Office of Elementary and Secondary Education, Summer 1988, Sec. F, pp 23-24);
  - additionally, the Commissioner has ruled that successive short-term suspensions over a short period of time are equivalent to a change of placement requiring the CSE to follow the procedures established under Article 89 of Education Law, including pendency procedures, (Application of *A Child with a Handicapping Condition*, 28 Ed Dept Rep 342); and
  - during the pendency of any proceedings conducted pursuant to Section 200.5 of the Regulations, unless the Commissioner or local BOE and the parents or legal guardian otherwise agree, the student shall remain in the then current educational placement; (NY Educ L Sec 4404(4) and (8NYCRR 200.5(a)(ix)) and
- free appropriate public education is provided through access to the full range of programs and opportunities available in regular and special education. A student's participation in regular education shall be provided to the extent appropriate to their individual needs pursuant to 34 CFR 300.227 and in accordance with the following:
  - the modification of instructional techniques and materials so as to provide the opportunity for a student with a disability to meet diploma requirements. The appropriateness of these modifications will be considered at each student's annual review of their IEP (8NYCRR 100.2(s)(2)); and
  - students shall not be denied membership or participation on the basis of race, sex, marital status, color, religion, national origin, or disability in any program or activity which is included in a school program of curricular or extracurricular activities. This is subject to the conditions of Sections 100.2(k) and 200.2(b)(1) of the Regulations.

In New York State the responsibility for evaluating and placing students with a disability is shared with public and private agencies operated or supervised by the Division for Youth (DFY), Department of Social Services (DSS), Office of Mental Health (OMH), Office of Mental Retardation and Developmental Disabilities (OMRDD) and the Department of Correctional Services (DOCS). A system for the evaluation and placement of a student thought to have a disability and being considered for placement, in a child care institution, residential treatment facility or an intermediate care residential facility operated or licensed by another State agency, is provided in Sections 4005 and 3202 of Education Law. Schools operated or supervised by DSS, DFY, OMRDD, OMH and DOCS must establish CSEs which are responsible for the evaluation and placement of students thought to have a disability. Since school districts cannot directly place students who have a disability in these facilities, the agency CSEs are responsible for the evaluation and development of an IEP for such students.

II. FULL EDUCATIONAL OPPORTUNITY GOAL

New York State guarantees a full educational opportunity for all students who have disabilities ages 3 through 21. A student with a disability means a person ages 5 through 21, who is entitled to attend public schools pursuant to Section 3202 of Education Law and a child ages 3 through 5 who is entitled to services pursuant to Section 4410 of Education Law and who, because of mental, physical or emotional reasons can only receive appropriate educational opportunities from a program of special education. Such term does not include a student whose educational needs are due primarily to unfamiliarity with the English language or to environmental, cultural or economic factors. (NY Educ L Sec 4401) The Board of Education (BOE) or trustees of each school district is required to furnish suitable educational opportunities for students with disabilities through the special services or programs listed in Sections 4401 or 4410 of Education Law. A free and appropriate education in the least restrictive environment for children residing in child care institutions is guaranteed through Sections 4001 to 4006 of Education Law. The needs of the individual student shall determine which services must be rendered. (NY Educ L Sec 4402(2)(a)) In addition, students with disabilities are assured a full opportunity to achieve the statewide goals as articulated in *A New Compact for Learning*.

The provision of special education services in New York State to students with disabilities from birth through age 2 is implemented through a court order process in accordance with Section 236 of the Family Court Act and Section 4406 of the Education Law. This legislation provides parents with the opportunity to petition the Family Court for the costs of special education services for their children with disabilities from birth through age two. Under this system, the Family Court judge may issue a court order for services. When an order is issued, the county where the student resides is responsible for payment of costs. The county may be reimbursed by the State Education Department for up to 50 percent of the costs of the services ordered by the court if certain criteria are met. The Governor has designated the Department of Health as the lead agency in the development of the Part H system for infants and toddlers with disabilities aged birth through 2 years of age. The SED is responsible for the provision of services to youth with disabilities ages 3 through 21 and administers the Family Court process for special education services for children with disabilities from birth through age 2. The Part H system is a statewide comprehensive, coordinated, multidisciplinary, interagency program with the established goal of providing appropriate early intervention services for infants with developmental delays and their families. Services will assist in transitioning to the Part B delivery system to ensure a full educational opportunity for children with disabilities ages birth through 21.

Data requirements included in Sections 300.124—300.127 of Federal Regulations are met through the submission of the Annual Data Report (ED 869) which is included in the Appendix section of this State Plan. Information gathered through each school district's census records, screening and referral procedures is recorded in a register of all students with a disability, which is required to be kept by each school district and is a responsibility of the BOE. (8NYCRR 200.2) The BOE or trustees of each school district must conduct the census in accordance with Sections 3240, 3241, and 3242 of Education Law and Section 200.2 of the Regulations.

III. CHILD IDENTIFICATION

The identification, location and evaluation of students with disabilities is the responsibility of the State Education Department (SED). In order to ensure that this responsibility is fulfilled, the SED delegates these functions to each local school district's Board of Education and to each State agency responsible for the care of children or the operation of a school. Students with disabilities in need of special education are identified, located and evaluated through the following statewide activities:

- A census is conducted by the board of education or trustees of each school district at least once every two years by individuals trained on the procedures and regulations regarding the collection of census data including the confidentiality of personally identifiable data. The census report of all students with disabilities, birth through 21 years of age, includes information on where they are receiving their educational services, and if not receiving services, the reasons they are unserved. (NY Educ L Secs 3240, 3241, 3242, and 4403(1)) and (8NYCRR 200.2))

- The SED continues to support the Early Childhood Direction Centers (ECDC) which are coordinated by the Office of Vocational and Educational Services for Individuals with Disabilities (VESID) and located throughout New York State. The ECDCs are designed to provide assistance and information to professionals and parents of children with disabilities below age 5 in accessing programs and services. Parents of children below the age of 3 years who suspect that their child has a disability should contact the Early Childhood Direction Center in their region or an agency which provides assessment services to arrange for an evaluation to be conducted. If the program or agency is not able to conduct an evaluation of the child, a referral should be made to the ECDC in that region. Professional staff of the Direction Center will match children in need to local evaluation agencies and will follow up with the family to ensure that a comprehensive evaluation is conducted. Similarly, if an agency or program which provides special education and related services to children with disabilities below the age of 3 pursuant to Section 236 of the Family Court Act and Section 4406 of the Education Law, cannot provide special education services to an infant or toddler determined to have a disability, a referral should be made to the local ECDC so that assistance can be provided to match the child to needed special education programs and services.

- A screening of all new entrants to the public school system and of those students who perform below minimum standards on statewide tests is required. Each school district is responsible for screening all new entrants by December 1 of each school year. This diagnostic screening must be conducted by persons appropriately qualified or trained in the administration of instruments and regulations regarding confidentiality of personally identifiable data. As a result of this screening, school district staff are responsible for referring all students who are suspected of having a disability to the Committee on Special Education (CSE) within 15 calendar days after the diagnostic screening. (8NYCRR 117)

- Referring a child thought to have a disability to the district's Committee on Special Education or Committee on Preschool Special Education (CPSE) is another means of identifying students with disabilities. Information on the referral process has been provided statewide to parents, approved preschool programs, other State agencies, and school districts through various training and technical assistance activities. (NY Educ L Secs 4402(1)(a)(b)(2) and 4410(3)) and (8NYCRR 200.4(a) and (b) and 200.16(b) and (c))

- Students with disabilities possibly needing adult services are also identified through required regulatory procedures. Section 200.4(h) of the Regulations establishes detailed procedures for informing students with disabilities of adult services options and informing other State agencies of the needs of students preparing to exit secondary programs. The students' adult services needs are identified, and consent obtained for releasing information to the appropriate State adult service agencies. The CSE must then submit an annual report to the

SED by October 1 of each year which lists the number of students referred to each State agency for adult services, type and severity of the disability, number of persons denied eligibility for services by other State agencies, and other information regarding the need for adult services. The information required through Section 200.4(h) of the Regulations is intended to provide notice to parents, guardians or eligible students of adult services, identify their specific needs, provide for the transmittal of this information to the appropriate State agency to allow for planning and to inform SED, the responsible agency, of the need and status of adult service programs. (NY Educ L Sec 4402(5)) and (8NYCRR 200.4(n))

- Schools operated by or supervised by other State agencies, including the Division for Youth (DFY), Department of Social Services (DSS), Office of Mental Health (OMH), Office of Mental Retardation and Developmental Disabilities (OMRDD), and the Department of Correctional Services (DOCS) are responsible for locating, identifying and evaluating children with disabilities in New York State. A system for the evaluation and placement of children thought to have a disability and being considered for placement in a child care institution, residential treatment facility or an intermediate care facility is provided by Sections 4005 and 3202 of Education Law. These agencies maintain CSEs which are responsible for the evaluation and identification of students thought to have a disability. Since school districts cannot directly place students with disabilities in these facilities, the facility's CSE is responsible for the evaluation and development of an Individualized Education Program (IEP) for such students. These agencies are required to keep their own census of pupils, and submit data directly to the Commissioner of Education. (8NYCRR 200.2)

Information gathered through the district's census records, screening and referral procedures is recorded in a register of all students with disabilities which is required to be kept by the CSE or CPSE. Section 200.2 of the Regulations of the Commissioner requires that the following information must be maintained in the register for each student identified and located:

- data requirements:
  - — procedures must be designed to record the following data on each student;
    - student's or preschool student's name, address, and birth date;
    - student's or preschool student's parents' names, address(es) and the dominant language of the student's or preschool student's home;
    - dates of referral, evaluation, recommendations of the CSE or CPSE actual placement, and annual program reviews;
    - site where the student or preschool student is currently receiving an educational program; and
    - if the pupil or preschool student is not receiving an appropriate public education, the reason shall be described.
  - — the data must be organized so that it can readily be determined whether each student is receiving an appropriate public education, a partial education or no education at all;
- the reporting of data must be conducted in accordance with the following policies and procedures:
  - — school districts must prepare, and keep on file, summary reports of student and preschool student data, including numbers of students and preschool students who are unserved; and the reasons they are unserved and served; and
  - — a summary report of the students and preschool students served must be submitted by local school districts to the State Education Department on prescribed forms.
- this information must be reported by October 1st to the CSE or CPSE. The board of education or trustees must also keep on file the register and related summary reports which shall be available to the district superintendent of the supervisory district in which the district is located or other representatives of the State Education Department.

The activities described above have been conducted under the State Plan period of 1990-1992. Each school district or State agency has conducted its census and maintained a register. The resources specified in the 1990-92 State Plan including local educational agencies' resources, the SED, and the Early Childhood Direction Centers were used to achieve the activities.

The child identification efforts required under Part B of the Individuals with Disabilities Education Act are coordinated with requirements of Part H of the same Act, through activities within the SED and the Department of Health. In addition, the State Interagency Coordinating Council is charged with responsibility for coordinating the transition of services for children age birth through 2 occurs smoothly.

In addition to the data required for child identification, the SED also collects other types of comprehensive data on students with disabilities through educational data systems. For example, the following data is reported each year by school districts:

- Comprehensive Assessment Report (CAR)—each school district and nonpublic school must provide information on student test data, enrollment, dropout and attendance rates, and other school indicators as prescribed by the Commissioner, by October 31;
- Basic Educational Data System (BEDS)—teachers and school administrators must complete data regarding numbers of students in programs and enrollment, annually;

- ST3 Expenditure Report—data is reported on funding costs and program expenditures, yearly;
- Occupational Educational Data System (OEDS)—data is collected on enrollment in occupational education courses and placement, including participation of students with disabilities, each year;
- Vocational and Applied Technology Education Act (VATEA) Plans—school districts receiving VATEA funds must submit extensive documentation annually of their occupational education activities and goals. As the VATEA funding priorities target special populations, much of the planning report focuses on programs and data regarding students with disabilities;
- Part 200 Management System—This computerized system enables school districts to track students, collect and report data, and develop IEPs. This comprehensive data and special education management system is being implemented by approximately 250 school districts across the State;
- Report of Secondary School-Aged Pupils with Handicapping Conditions Exiting the Education System—additional information on student completion or incompletion is collected annually.

For the 1993-1995 State Plan period, it is expected that the SED will continue to ensure the maintenance of a comprehensive database on students with disabilities. **The following child identification activities will take place:**

Activity	*Time Lines*	*Resources*	*Outcomes*
Census	Biannually	Each school district's trained personnel	Comprehensive identification of students with disabilities
Screening	Completed yearly by December 15	School district's personnel	Diagnostic information on all new school-age students
Referral	Continuous	Evaluation staff of school district, CSE members, ECDCs	Timely evaluation of students with disabilities
Aging Out	Annually	State agencies, school district, SED	Initial stages of tracking systems to plan for adult services
Data reporting PHC-1	Annually by December 15 to SED	SED offices	Data on number of students with disabilities by placement, age, and disability
Identification	Continuous	ECDC	Children suspected of having a disability are located and matched to appropriate local evaluation sites which conduct a comprehensive evaluation.

Monitoring Policies and Procedures

In accordance with the annual LEA application process, school districts and agencies are required to submit by December 15 to the SED the number of students with disabilities on PHC-1 forms that are designed to report:

- the number of students with disabilities in public school programs (in the district, or neighboring public district or a BOCES program) by age group and disability and type of program/placement; and
- the count of eligible students with disabilities in schools operated or supported by State agencies, approved private schools, and other educational agencies.

The data from these forms is stored in a computer program by SED personnel and are available for various State reporting and planning purposes by February of the reporting year.
In addition, the Division of Program Monitoring, Office for Special Education Services, ensures that a school district's child identification procedures are in compliance with State and Federal requirements through its periodic reviews of a district's register, qualifications of personnel, and identification procedures.

New York State Initiatives

- The Part 200 Management System will continue to be expanded in scope and implementation. The cities of Buffalo, Rochester and Yonkers, as well as 250 other New York State school districts will continue to implement this system during the 1993-1995 State Plan period. Additionally, it is anticipated that New York City will begin to implement the System during that time.
- As a result of the adoption of policy on the transition of students to adult services passed by the Board of Regents in December 1990, data pertaining to transition needs, programs and services will be incorporated into a data reporting system. In addition, current data collection systems required throughout SED will be coordinated with OSES to ensure that appropriate information is collected to meet transition needs.
- NYSED Database is being established through the Technology Network Ties (TNT) program to facilitate consolidated electronic data reporting for all SED required data. This system will be implemented statewide for all public schools by July 1993. It is anticipated that NYSED's Comprehensive Statewide Personnel Development (CSPD) data collection requirements will be addressed through this system. The system will be developed to allow disaggregation of data for analysis and research purposes.

IV. INDIVIDUALIZED EDUCATION PROGRAMS

The New York State Education Department ensures, through its laws and regulations, that an appropriate Individualized Education Program (IEP) is developed, implemented, and reviewed at least annually by each public agency for every student with a disability who attends a public school, is placed in or referred to a private school or facility by a public agency, or is enrolled in a parochial or other private school and is receiving special education or related services from a public agency. (8NYCRR 200.4) and (NY Educ L Sec 4402) A student's IEP should be developed in keeping with *A New Compact for Learning*, which underscores the principles that all children can learn. The IEP is maintained as required by FERPA and the State Education Department document entitled *Records Retention and Disposition Schedule, ED-1*. The Division of Program Monitoring, Office for Special Education Services, directly monitors school programs for compliance with Federal and State laws and regulations regarding IEPs.

Definition

An IEP is a written plan which specifies the special education programs and services to be provided to meet the unique educational needs of a student with a disability. (8NYCRR 200.1(q)) Recent changes to regulations have modified the procedures for developing a student's individual education program to a single phase process. (8NYCRR 200.4)

State Agency Responsibility

In New York State, the Board of Education (BOE) is responsible for ensuring that each student with a disability is appropriately evaluated, and that an IEP is prepared, implemented and reviewed on at least an annual basis for each student with a disability. (NY Educ L Sec 4402(1)) and (8NYCRR 200.3, 200.4 and 200.16) The OSES, Division of Program Monitoring, monitors school districts, private schools and public agencies serving students with disabilities to ensure that these responsibilities are appropriately carried out.

When the IEP Must Be in Effect

The IEP must be implemented as soon as possible but no later than 30 school days from the date that the CSE or CPSE forwarded its recommendation to the BOE. The IEP must be in effect before special education and related services are provided to a student. Within this time period, the following steps are completed:

- the BOE notifies the parents of the BOE's approval of the recommendation of the committee;
- the parents consent for placement and services for students entering special education for the first time;
- the BOE arranges for the placement of the student;
- all necessary information, including the IEP, is forwarded to teachers and supervisors who will be providing the services; and
- the program and services are initiated according to the date specified in the IEP. (8NYCRR 200.4(c))

The CSE and CPSE is required to review each student's IEP at least annually to ensure that it continues to meet the student's individual needs. Each public agency must, at the beginning of the year, have in effect an IEP for every child with a disability who is receiving special education from that agency. The scheduled annual review, or more frequent reviews or reevaluations conducted at the request of the parent, teacher, or administrator for the purpose of recommending continuation, change, or termination of the student's program, require notification to the parent(s) of the opportunity to participate in the review meeting. (8NYCRR 200.4(d) and (f)) The parent(s) must be notified of the CSE/CPSE recommendation subsequent to such review or reevaluation. The CSE must arrange for an appropriate reexamination of each student age 3 through 21, with a disability at least every three years by a physician, a school psychologist as appropriate, and, to the extent required by the CSE, by other appropriately qualified professionals. This triennial evaluation

should be sufficient to determine each student's individual need and continuing eligibility for special education.

IEP Meetings

According to Section 200.4(c) of the Regulations of the Commissioner, each district's CSE/CPSE must meet to develop an IEP and forward this recommendation to the BOE within 30 days of the date of receipt of consent or within 40 days of the date of receipt of referral, whichever ends earlier. The CSE/CPSE must then meet at least annually to review and, if appropriate, revise each student's IEP. (8NYCRR 200.4(f))

Participants in Meetings

State law mandates that each BOE, board of trustees, or facility director appoint a Committee on Special Education. The membership of such committee must consist of, at least, a school psychologist, a representative of the school district who is qualified to provide or administer or supervise special education, a school physician, and a parent of a student with a disability residing in the district, provided that such parent is not employed by or under contract with the school district, the child's teacher, and other such persons as the BOE shall designate. (NY Educ L Sec 4402(1)(b)(1) and 8NYCRR 200.4(c)(3)) If the purpose of the meeting is to consider the need for transitions services, the school district must invite the student and a representative of the agencies likely to be responsible for providing or paying for transition services. If the student does not attend, the district must take steps to ensure that the student's preferences and interests are considered. In addition, if an invited agency does not send a representative, then the district must take steps to involve the agency in the planning of transitions services. (8NYCRR 200.4(d)(3)) A BOE may establish additional CSEs to the extent necessary to ensure timely evaluations and placements. Also, a BOE may establish subcommittees on special education to assist a CSE. The membership of the subcommittees must include at least a school psychologist, a teacher or administrator of special education, a school physician, and a parent of a child with a disability residing in the district.

In cities with populations in excess of 125,000, a BOE must appoint subcommittees on special education to the extent necessary to ensure timely evaluation and placement of students with disabilities. The membership of these subcommittees must include, but is not limited to, the child's teacher, a representative of the school district who is qualified to provide, administer or supervise special education, and a school psychologist whenever a new psychological examination is reviewed or a change to a more restrictive program option is considered. (NY Educ L Sec 4402(1)(b)(1)(b) and 8NYCRR 200.3(c)).

State law also mandates that each BOE also appoint a CPSE. The CPSE is comprised of a representative of a school district who shall be the chairperson, a parent of a preschool or elementary student with a disability who resides in the district, and a professional who participated in the evaluation of the student. The municipality in which the child resides may also appoint a representative to the CPSE. A representative of a lead agency for implementing Part H of P.L. 99-457, if any, shall also serve as a member of a CPSE. (NY Educ L Secs 4402 and 4410). At meetings to develop the recommendation, the preschool child's parent and, if any, the preschool child's teacher shall be included. At each annual review of a preschool child, the CPSE must include the preschool child's parent and the preschool child's teacher as participants in the meeting.

Given the required preparation for certification/ licensure of teachers, school psychologists, physicians and school district administrators/supervisors of special education, and the in-service training provided to CSEs/CPSEs members as outlined in Section 200.2(b)(3) of the Regulations of the Commissioner, it is assured that participants at the meeting are knowledgeable regarding the evaluation procedures used with the child and are familiar with the results of the evaluation and with placement options.

Parent Participation

Parent participation is ensured at each step of their child's special education program. (8NYCRR 200.5) A number of notices to parents, which are described in the Procedural Safeguard section of this State Plan, contain specific information required at certain points in the CSE/CPSE process. Notice is a statement in the dominant language or mode of communication of the parents, which describes the proposed actions to be taken by the school district regarding a student who is thought to have or has a disability. Notices provide information on the purpose, date, time, location, and persons expected to attend the meeting during which the parent will have the opportunity to participate in the development of the IEP and to address the CSE/CPSE, either in person, in writing, or through other alternative methods, including telephone calls, regarding any recommendation to be made to the BOE. (8NYCRR 200.4(c)(3)) The parent may be accompanied to such meetings by any individuals the parent may desire (8NYCRR 200.5(a)(1)(iii)) and, where appropriate, the student may attend. (8NYCRR 200.4(c)(3)) If parents are not able to attend IEP meetings, detailed documentation of attempts made by the CSE/CPSE to arrange for a mutually agreeable time and place must be maintained. The Committee must provide alternative means allowing for parental participation such as individual or conference-call discussions.(8NYCRR 200.5(a) and 200.4(c)) Additionally, the CSE/CPSE upon completion of an evaluation, a reevaluation, or review of a student with a disability must report its

findings to the BOE or trustees in the form of a recommendation regarding the student's eligibility and need for special education and will give written notice to the parent(s) of its recommendation. (8NYCRR 200.5(a)(4))

Parents are ensured the right to fully participate in the development of any recommendation before it is sent to the BOE. The CSE/CPSE shall ensure that the parent(s) understands the proceedings of the meeting and shall arrange for the presence of an interpreter, if necessary. If the parent does not choose to participate in the IEP meeting, the CPSE/CSE must forward its recommendation to the parent at the time the recommendation is sent to the BOE. The parent will also receive a copy of the recommendation approved by the BOE. (8NYCRR 200.4(c)(5))

Content of the Individualized Education Program (IEP)

If the CSE or CPSE determines the child to be eligible for special education, the recommendation must:

- Report the student's present levels of performance indicating the individual needs in each of the following areas:
  - — academic or educational
  - — social development
  - — physical development
  - — management needs
- Indicate the student's disability.
  - — Student with a disability is defined in Section 200.1(mm) of the Regulations of the Commissioner. The terms used in this definition are: autistic, deaf, deaf-blindness, emotionally disturbed, hard of hearing, learning disabled, mentally retarded, multiply disabled, orthopedically impaired, other health-impaired, speech impaired, traumatic brain injury and visually impaired.
  - — Preschool student with a disability is defined in Section 200.1(ee) of the Regulations of the Commissioner. A preschool student with a disability shall either exhibit a significant delay in one or more functional areas related to cognitive, language and communicative, adaptive, social-emotional or motor development which adversely affects the student's ability to learn or meet the criteria for autistic, deaf, deaf-blindness, hard of hearing, orthopedically impaired, other health-impaired, traumatic brain injury, or visually impaired under Section 200.1(mm) of the Regulations of the Commissioner. A delay or disorder must be documented by the results of an individual evaluation in accordance with Section 200.4(b)(1)-(4) which includes, but is not limited to, information in all functional area(s), a 33% delay in one funcitonal area, or 25% delay in each of two functional areas, or if appropriate standardized instruments are individually administered in the evaluation process, a score of 2.0 standard deviations below the mean in one functional area, or a score of 1.5 standard deviations below the mean in each of two functional areas.
- List annual goals that are consistent with the student's educational needs and abilities.
- List short-term instructional objectives and evaluative criteria, evaluation procedures and schedules to be followed during the period beginning with placement and ending with the next scheduled review by the CSE/CPSE.
- Indicate recommended special education program(s) and related services. The IEP must also indicate the extent to which the student will participate in regular education programs. For school-aged students, the IEPs must specify physical education or adaptive physical education programs. If a special class program is recommended, the appropriate class size and staffing ratio must be stated. If occupational/vocational education is stated as a goal, the appropriate program must be provided. The areas of the regular education program in which the student will receive consultant teacher services must be indicated when appropriate. (8NYCRR 200.4(c)(2)(iv)) For preschool students, the IEP must indicate the extent the child will participate in programs in the least restrictive environment (8NYCRR 200.16(d)).
- Indicate a projected date for initiation of special education programs and related services, the amount of time per day the student will receive such services, and a projected date of review of the student's need for such services.
- Describe any specialized equipment or adaptive devices needed for the student to benefit from education.
- List testing modifications to be used consistently by school-aged students in the recommended program.
- Indicate the recommended placement.
- Define the extent to which the preschool child's parents will receive parent education, when appropriate.
- If the recommendation for 3- and 4-year-olds is for itinerant services selected from the list maintained by the municipality, indicate the location where such services will be provided. (8NYCRR 200.16(d)(3)).
- Indicate, for those students age 15 (and at a younger age, if appropriate) a statement of the needed transition services including, if applicable, a statement of the responsibilities of the school district and participating agency for the provision of such services and activities that promote movement from school to postschool opportunities, or both, before the student leaves the school setting. Activities must be provided in the areas of instruction, community experiences and the

development of employment and other postschool adult living objectives, or the recommendation must state the reasons tht such activities are not needed in each area. (8NYCRR200.4(c)(2)(v))

Private or Parochial School Placements

The provision of special education programs and services for students with disabilities who have been placed in or referred to a private school by a public agency is described in the Private School section of this State Plan. For all school-age students with disabilities enrolled in private or parochial schools, the public school district CSE initiates and conducts meetings to develop, review and revise IEPs for appropriateness for such students. Section 200.4(c)(3) of the Regulations states that, if the recommended placement is to be in a school operated by an agency or school other than the school district in which the student would normally attend if the student did not have a disability or if the education of a student residing in a facility operated or supervised by a State department or agency is the responsibility of the school district, a representative of the agency or school shall be given the opportunity to attend. In the event that such persons are unable to attend the meetings, the CSE shall attempt alternative means to allow for their participation, such as individual or conference telephone discussions, and such attempts shall be documented.

An IEP will be initiated and conducted by a child care institution maintaining a school for children with disabilities. (NY Educ L Sec 4002) At such meetings a parent and an agency representative must be involved with decisions about the student's IEP and agree to any proposed changes prior to implementation. The public agency and State Education Department retains responsibility for compliance with the above. (NY Educ L Secs 4002-4005)

Individualized Education Program Accountability

Each public agency must provide special education and related services to students with disabilities in accordance with their individualized education program (IEP). However, agencies, teachers, administrators, and members of the CSE/CPSE and Boards of Cooperative Educational Services (BOCES) are not held accountable if a student does not achieve the growth projected in the annual goals and objectives as listed on the IEP. Should a case arise against school district personnel concerning the performance of their duties, Section 3811 of Education Law applies.

Section 3811 of Education Law requires school districts to provide for all reasonable costs and expenses in the defense of an action or proceeding brought against any superintendent, principal, teacher, other members of the teaching and supervisory staff, noninstructional employees, any trustee or member of the CSE/CPSE or subcommittee, or any BOCES provided that such individual appeared to have acted in good faith in the performance of his/her duties. Besides all the reasonable costs and expenses, costs and damages adjudged against such member of the school district arising out of the performance of his/her duties or the exercise of his/her powers are also included. Such individual has to give written notification to the BOE or BOCES within five days after the service of process upon him/her and a court or the Commissioner of Education must certify that such member appears to have acted in good faith in the performance of his/her duties. The school board, within ten days, has the right to designate and appoint legal counsel to represent the individual. In the absence of such a designation and appointment, the individual may select his/her own counsel.

However, Boards of Education must implement the IEP recommended by the CSE/CPSE and the above sections of Education Law do not relieve such agencies from making good faith efforts in assisting the student to achieve the goals and objectives listed on the IEP. Compliance with the IEP development and implementation process is monitored by the Division of Program Monitoring. (NY Educ L Sec 4402(1)(c)(2)) In addition, school districts must ensure IEP accountability through their LEA application process.

V. PROCEDURAL SAFEGUARDS

Current New York State Standards and Procedures

New York State has established a comprehensive system of procedural safeguards to ensure that each student with a disability is provided a free appropriate public education in the least restrictive environment. The statutory and regulatory requirements described in this section are applicable to all public agencies in the State which are responsible for the provision of special education programs and services to students with disabilities who are ages 3 through 21. New York State due process rights and procedures are included in Article 89 of Education Law and Parts 200, 276 and 279 of the Regulations of the Commissioner of Education.

Implementation Procedures

The Office for Special Education Services (OSES) implements procedures to inform each public agency of its responsibility for ensuring effective implementation of procedural safeguards for students with disabilities. The Office's Division of Program Development (DPD) develops training programs, conducted by Division staff and a statewide network of Special Education Training and Resource Centers (SETRC), for Committee on Special Education (CSE) and Committee on Preschool Special Education (CPSE) members, other public agency staff and, when appropriate, the general public. Division staff provide materials, information, and technical assistance necessary for the SETRC network to replicate training for educators, parents and members of agency staff who are not able to participate in training conducted by Division staff, and to conduct follow-up training for agency staff based on local needs. DPD staff conduct updated training programs three times a year for the SETRC network which, in turn, is responsible for training and for providing technical assistance to public agencies. The DPD also develops and disseminates written information to public agencies through manuals, such as the *Guidebook for Committees on Special Education in New York State* and *A Parent's Guide to Special Education*, through the OSES periodical *Newsbriefs* and through memoranda. Public agencies may also readily receive oral and written technical assistance by directly contacting the Division of Program Development.

Public agencies are also kept informed of responsibilities pertaining to the implementation of procedural safeguards through actions of the OSES Division of Program Monitoring (DPM). DPM staff routinely conduct comprehensive compliance reviews of public agencies, with special emphasis on procedural due process safeguards, and identify areas warranting corrective action. DPM staff also provide technical assistance and information to public agencies in connection with compliance reviews and in response to inquiries directly received from public agencies.

Prior Notice

New York State due process procedures include notice and consent provisions which ensure active and informed participation by parents of students who have, or are suspected of having disabilities. Parent means a parent, guardian, a person acting as a parent of a child, or a surrogate parent; but does not include the State if the child is a ward of the State. (8NYCRR 200.1(aa)) In regard to preschool children who have, or are suspected of having disabilities, parent means the parent or person in parental relation. (NY Educ L Sec 4410 (1)(i))

Notice means written statements provided in English and translated, or interpreted when appropriate, into the dominant language or mode of communication of the parents, which describe the proposed action to be taken by the school district, or the Committee on Special Education on behalf of a child thought to have a disability, describe any other options considered and explain why the proposed option was selected, and describe each evaluation, procedure, test, record or report, and any other factors upon which the proposed action was based. This ensures that notices are written in a language that is under-

standable to the general public. (8NYCRR 200.1(x)) If, in order to meet notice requirements, information must be provided in a native language other than English or in an unwritten mode of communication, the school district maintains a written record that the parent understands the content of the notice. Pursuant to Section 200.16 of the Regulations, the above notice requirements are also applicable to proposed actions to be taken by the Committee on Preschool Special Education.

Notice of Refusal to Initiate or Change Identification, Evaluation, or Placement

Written notice which meets the requirements of Section 200.5(a) of the Regulations of the Commissiioner must be given to the parents of a student with a disability before the school district refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student.(8NYCRR 200.5(a))

Notice of Initial Evaluation, Review, and Reevaluation

The required components of notices which must be provided to parents prior to initial evaluation (upon referral) due to a suspected disability, prior to annual review or a review pursuant to Section 200.4(e)(6) of the Regulations and prior to reevaluation are included in Sections 200.5(a)(1) and 200.16(h)(2) of the Regulations. The notice shall incorporate all the provisions of 34 CFR 300.505(a)(1). Such notices shall include the following:

- Include a description of the proposed evaluation or review and the uses to be made of the information.
- Indicate that the school files, records, and reports pertaining to the student will be available to the parent for inspection and interpretation. Such records must be available for duplication at a reasonable cost (This provision also assures that parents are annually notified of the opportunity to examine records). Section 200.2 of the Regulations requires school boards to establish administrative practices and procedures regarding confidentiality of personally identifiable data, information or records pertaining to a student with a disability in accordance with Section 300.560-300.575 and Part 99 of title 34 of the Code of Federal Regulations.
- Indicate that the parent must have the opportunity to participate in meetings of the CSE/CPSE for the purpose of developing recommendations regarding current and projected levels of performance, eligibility for special education, participation in regular and special education programs and services, and the provision of alternative testing techniques and specialized equipment and adaptive devices.
- Indicate that the parent may be accompanied at such meetings by other individuals.
- Inform the parent of the right to request the presence of the school physician member of the CSE at committee meetings held upon referral of a child suspected of having a disability or whenever such committee plans to modify or change the identification, evaluation or educational placement of the child; (NY Educ L Sec 4402 (1)(b)(1)) (Pursuant to Section 200.16(h) of the Regulations of the Commissioner of Education, this information is not required to be provided to parents of preschool children with disabilities).
- Indicate that the parent may submit evaluation information which, if submitted, must be considered by the CSE/CPSE as part of its evaluation or review.
- Indicate that if the parent disagrees with the evaluation obtained by the school district, the parent has the right to an independent educational evaluation at public expense. However, the school district may initiate an impartial hearing to show that its evaluation is appropriate and, if the hearing officer determines that the evaluation is appropriate, the parent has the right to an independent evaluation, but not at public expense. If a hearing officer requests an independent evaluation as part of a hearing, the cost of the evaluation must be at public expense.
- Indicate that upon request, the parent must be provided the names, addresses and telephone numbers of appropriate public and private agencies and other professional resources where independent educational evaluations may be obtained. Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the school district uses when it initiates an evaluation.
- Describe in detail the right to obtain an impartial hearing, as specified in Sections 200.1(p) and 200.5(c) of the Regulations.
- Include a statement of procedures for appealing the decision resulting from the impartial hearing as specified in Section 200.5(d) of the Regulations and a statement of procedures for filing civil action in either State or Federal court according to Article 78.
- Indicate that during the pendency of any due process proceedings conducted pursuant to Education Law and Regulations of the Commissioner of Education, unless the Commissioner or local Board of Education and the parents otherwise agree, the student will not be evaluated (for notices sent prior to evaluation) and will remain in the then current edu-

cational placement. If applying for initial admission to a public school, the student will be placed in the public school program until all such proceedings have been completed.

- Indicate that the parent may be able to obtain free or low-cost legal and other relevant services at no expense to the school district, including the names, addresses, and telephone numbers of appropriate agencies and other professional resources where such services may be obtained.
- Include a statement that, where the parent or legal guardian is a prevailing party in an action or proceeding brought pursuant to the provisions of Public Law 99-372, a court, in its discretion, may award reasonable attorney's fees as part of the costs to the parents of a student with a disability.
- If the purpose of the meeting is to consider transition services, the notice also indicates the purpose and that the district will invite the student and identify any other agency that will be invited to send a representative. (8NYCRR 200.5 (a)(1)(xiii))

In addition to the above requirements, the notice must, for parents of students referred to the CSE or CPSE for the first time:

- Request parental consent to the proposed evaluation of a student not previously identified as having a disability. (8NYCRR 200.5(a)(2)(i) and 200.16(h)(3) and (6))
- Advise the parent of the right to consent or withhold consent to an initial evaluation or placement of a student who has not previously been identified as having a disability. (8NYCRR 200.5(a)(2)(ii)) and 200.16(h)(3) and (4))
- Indicate that during the pendency of any proceedings conducted pursuant to Education Law and the Regulations, unless the Commissioner or local Board of Education and parents otherwise agree, the student will not be evaluated and will remain in the then current educational placement of such student. If applying for initial admission to public school, the student will be placed in the public school program until such proceedings have been completed. (8NYCRR 200.5(a)(2)(iii)) (Pursuant to Section 200.16(h)(2) of the Regulations, this information is not provided to parents of preschool children with disabilities).

Pursuant to Section 200.16(h)(2) of the Regulations of the Commissioner of Education, such notices to parents of preschool children referred to the CPSE for the first time must also:

- Include a list containing a description of each preschool program which has been approved by the Commissioner of Education to provide evaluations, and is located within the county in which the preschool child resides and adjoining counties, or, for children residing in the City of New York, within the City of New York and adjoining counties, the procedures which the parent should follow to select a program to conduct an evaluation.
- Indicate that during the pendency of any due process proceedings, those preschool children with disabilities who are receiving special education programs or services pursuant to Section 4410 of the Education Law will remain in their current education placement until all such proceedings have been completed. It is not, however, required that a child with a disability remain in a preschool program for which he or she is no longer eligible pursuant to Section 4410 of the Education Law during the pendency of proceedings.
- Indicate that during the pendency of any due process proceedings, a preschool child not receiving special education programs and services pursuant to Section 4410 of the Education Law, if the Commissioner or local Board of Education and the parent agree, may receive approved special education programs and services until all such proceedings are completed.

The above notices must provide information on the purpose, date, time, location, and name and title of persons expected to attend the meeting of the CSE/CPSE to participate in the development of their child's Individualized Education Program (IEP) and to address the committee, either in person, in writing, or through other alternative methods, including telephone calls. (8NYCRR 200.5(a)(3) and 200.16(h)(3)) and (NY Educ L Sec 4410(4)(e)) The CSE/CPSE must provide appropriate notice to parents immediately upon the receipt of a referral, (8NYCRR 200.4(a)(6) and 200.16(b)(1)(iv)) and at least five days prior to conducting an annual review. (8NYCRR 200.4(f)(2) and 200.16(b)(1)(iv)) The provision for a subsequent notice is to assure a mutually agreeable date, time, and location for IEP meetings. If parents are not able to attend IEP meetings, records of attempts made by the committee to arrange a mutually agreeable time and place must be maintained. (8NYCRR 200.5(a)(3) and 200.16(h)(3))

In regard to preschool children with disabilities, pursuant to Section 4410(4)(e) of Education Law and Section 200.16(c)(3) of the Regulations, the CPSE, prior to the CPSE meeting, must provide the parent with a copy of the summary portion of the evaluation, including any and all recommendations of the evaluator. Upon timely request of the parent, the CPSE must, prior to meeting, provide a copy of all written documentation to be considered by the CPSE in the development of the child's IEP. Such information, however, must be provided to the parent at any time upon request. In addition, pursuant to Section 200.16(c)(2) of the Regulations, upon request of the parent, an approved evaluator must directly provide the parent with a copy of the statement and recommendation provided to the CPSE.

Notice of Recommendation

Upon the completion of an evaluation, reevaluation, or review of a student, the CSE/CPSE must send a written report to the Board of Education in the form of a recommendation regarding the student's need for special education. (8NYCRR 200.5(a)(4) and 200.16(d)) The recommendation must contain:

- a description of the action proposed or refused by the school district, an explanation of why the school district proposes or refuses to take action, and a description of any options the school district considered and the reasons why those options were rejected;
- a description of each evaluation procedure, test, record, or report the school district uses as a basis for the proposal or refusal; and
- a description of any other factors which are relevant to the school district's proposal or refusal. (8NYCRR 200.4(c)(1) and (2) and 200.5(a)(4)(i) and (ii))

The CSE/CPSE must also send written notice to the parents of its recommendation to the Board of Education. (8NYCRR 200.5(a)(4) and 200.16(d)(5)) This notice must be provided by the CSE no later than 40 school days following the date of referral or 30 days from receipt of parental consent, whichever is earlier. (8NYCRR 200.4(c) and 200.5(a)(4)) This notice must include the following:

- a detailed description of the recommendation to the Board of Education;
- the tests or reports upon which the recommendation is based and any other factors relevant to the school district's action or proposal. CPSE recommendations must also include statements provided by the parent and, in cases where the CPSE recommendation differs from the expressed preference of the parent, a report stating the reasons the CPSE recommended a different program; (8NYCRR 200.16(d)(5))
- a detailed description of the right to obtain an impartial hearing in accordance with the provisions of Education Law and the Regulations, including procedures for appealing the decision of the impartial hearing officer, information on legal and other services available to assist the parent, and an indication that the child will remain in the current educational placement until all proceedings have been completed;
- a request for parental consent for the school district to provide special education programs and services for students entering special education for the first time; (8NYCRR 200.5(a)(4)(ii)) and
- in cases where a CSE/CPSE recommends placement in a school which uses psychotropic drugs, a copy of the school's written policy pertaining to such use must be provided to the parent. (NY Educ L Sec 4402(1)(b)(3)(b) and 4410(5)(b)) and (8NYCRR 200.16(d)(3)(vi))

Pursuant to Section 200.16(d) of the Regulations, the notice of recommendation must be provided by the CPSE no later than 30 school days from receipt of parental consent. Such CPSE notice must include the same information prescribed in Sections 200.4(c) and 200.5(a)(4) of the Regulations, with the following differences:

- The CPSE notice of recommendation does not include information which
  - indicates the recommended program from options specified in Section 200.6 of the Regulations, the class size, if appropriate, and the extent of the student's participation in regular education programs, including physical education and adaptive physical education, occupational education, and areas of the regular education program in which consultant teacher services will be provided; and
  - indicates testing modifications to be consistently used by the student in the recommended educational program.
- The CPSE notice of recommendation must also include information which
  - identifies an appropriate program and/or service selected from the list of approved preschool programs and services established pursuant to Section 4410 of the Education Law;
  - indicates the recommended program option;
  - indicates the location where services will be provided, if the recommendation is for itinerant services selected from the list of providers maintained by the municipality;
  - defines the extent to which the preschool child will participate in programs in the least restrictive environment; and
  - defines the extent to which the preschool child's parents will receive parent education, when appropriate.

Pursuant to Section 4410 of the Education Law, the CPSE notice of recommendation may include a program which uses psychotropic drugs if such program has a written policy pertaining to such use. The parent of a child for whom such a recommendation is made must be provided with a copy of such written policy at the time such recommendation is made.

The Committee on Special Education must also provide a copy of the handbook for parents of students with disabilities, which the State Education Department is required to develop and distribute pursuant to Section 4403(8) of the Education Law, or a locally approved booklet to the parent of a child upon referral for evaluation to the Committee on Special Education. (NY Educ L Sec 4402(1)(b)(7))

Board of Education Notice

Within 30 school days after receiving the CSE/CPSE recommendation, the Board of Education must arrange for the implementation of appropriate special education programs and services in the least restrictive environment. The BOE must send written notice of its action to the parent prior to such implementation. If the BOE disagrees with the recommendation of the committee, the Board must send its recommendation back to the committee with notice of the need to schedule a timely meeting to review the Board's concerns and to revise the IEP as deemed approrpriate. The Board shall provide to the child's parents a copy of the Board's statement and the notice required pursuant to the regulation. (8 NYCRR 200.5(a)(6)) The BOE notice must also include the following due process information:

- a detailed description of the right to obtain an impartial hearing;
- a statement of procedures for appealing the impartial hearing officer decision; and
- an indication that during the pendency of any due process proceedings, unless the Commissioner of Education or local Board of Education and the parents otherwise agree, the student will remain in the then current educational placement. (NY Educ L Sec 4402(2)) and (8NYCRR 200.2(d)(1) and (2), 200.5(a)(5), 200.16(e)(1) and (2) and 200.16(h)(5))

Pursuant to Section 200.16(e)(4) of the Regulations regarding preschool children with disabilities, a Board of Education must also notify the parent, the appropriate municipality and the Commissioner of Education in the following instances:

- if the Board disagrees with the recommendation of the committee and sends the recommendation back to the CPSE;
- if the Board determines that such program or services must be terminated because the preschool child with a disability has moved out of the school district; or
- if the Board determines that a new municipality is responsible to contract with the provider for the same special education program and services because the preschool child with a disability has moved to a different municipality within the school district. The Board must issue a new written notice of the same special education services or programs arranged for by the Board effective the next school day which shall become the responsibility of the new municipality in which such child resides. Pursuant to Section 200.16(e)(5) of the Regulations, when a preschool child currently placed by another school district in an approved program moves into a new district, if the approved program is within a reasonable distance of such child's new school district of residence, the Board of Education of the new school district must issue a notice of the special servics and programs arranged for in order to continue such program. (Chapter 693 of the Laws of 1993)

Parent Consent

Consent means that the parent has been fully informed, in his or her dominant language or other mode of communication, of all information relevant to the activity for which consent is sought, has been notified of the records of the pupil which will be released and to whom they will be released. It is also denoted by this term that the parent agrees in writing to the activity for which consent is sought and has been made aware that the consent is voluntary and may be reconsidered at any time. (8NYCRR 200.1(j)) Written consent of the parent is required prior to initial evaluation and the provision of special education to a student who has not previously been identified as having a disability. In addition, written consent of the parent is required for initial placement in a 12-month educational program. (8NYCRR 200.5(b)(1) and 200.16(h)(6)) In the event that a parent does not grant consent for an initial placement within 30 days of a notice of recommendation, the Board of Education must initiate an impartial hearing to determine if such placement is warranted without parental consent. (8NYCRR 200.5(b)(3)) During the pendency of any proceedings conducted pursuant to Section 200.5, unless the Board of Education and parents otherwise agree, the student shall not be evaluated and shall remain in the then current educational placement. (8NYCRR 200.5(a)(2)(iii))

Prior to conducting a reevaluation or an annual review of the status of a student who has previously been identified as having a disability, the CSE must give written notice to the parent as described above. However, the obtainment of additional parental consent is not required in order for the reevaluation or review to be conducted, nor as a condition to provide special education programs and services approved by the Board of Education or as a condition of any benefit to the parent or student. (8NYCRR 200.5(a)(1) and 200.16(h)(1))

In the event that the parent chooses to withhold consent or fails to respond to the school district's request, Sections 200.4(a)(9) and 200.5(b)(2) of the Regulations include provisions authorizing informal conferences with the parent to discuss the appropriateness of regular education programs or services, or modifications of currently provided programs and services, which may be implemented in lieu of the referral to the CSE.

Section 200.16(d)(1) of the Regulations requires that the CPSE provide a recommendation to the Board of Education within 30 days from receipt of parental consent regardless of the date of referral. In the event that consent is not provided for an individual evaluation, the CPSE must implement the school district's practices and procedures, established pursuant to Section 200.2(b)(5) of the Regulations, for ensuring that the parent has received and understands the request for con-

sent. (8NYCRR 200.16(b)(1)(v)) Upon receipt of a CPSE recommendation, the Board of Education arranges for the appropriate approved preschool programs and services to be implemented for the student no later than 30 days from the recommendation of the CPSE. (8NYCRR 200.16(e)(1)) In the event that the parent does not provide consent for placement, no further action will be taken by the CPSE until such consent is received. (8NYCRR 200.16(h)(4))

Opportunity to Examine Records

Parents are notified, at least annually, regarding their right to review all school files, records, and reports which pertain to their child, through CSE/CPSE notices which are required prior to initial evaluation, review or reevaluation. (8NYCRR 200.5(a)(1)(ii) and 200.16(h)(1))

Education Law Section 4403(9) requires that the State Education Department make provision by regulation of the Commissioner of Education to assure confidentiality. Sections 200.5(f) and 200.16(h)(1) of the Regulations state that personally identifiable data, information or records pertaining to a student with a disability may not be disclosed by any officer or employee of the State Education Department or any school district, or member of a CSE/CPSE, to any person other than the parent of such child, except in accordance with the provisions of Section 300.571 of Title 34 of the Code of Federal Regulations. Private schools and State-operated and State-supported schools are also required to adopt procedures which are comparable to those required of school districts to preserve the confidentiality of records pertaining to students attending such schools. (8NYCRR 200.7(b)(2)) Parents must also be notified when confidential records need no longer be maintained by schools in order to provide educational services to the child, in accordance with records retention and disposition requirements of the State Archives and Records Administration (SARA) of the State Education Department and local school district policy. Such information must then be destroyed at the request of the parents. A permanent record may be maintained, however, including the student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed.

Independent Educational Evaluation

Section 200.1(r) of the Regulations defines independent evaluation as an individual evaluation of a student thought to have a disability, conducted by a person who is not employed by the public agency responsible for the education of the student. Pursuant to Sections 200.5(a)(1) and 200.16(h)(1) of the Regulations, parents are provided notice regarding their right to an independent evaluation prior to initial evaluation, review and reevaluation. Such notice must indicate that if the parent disagrees with the evaluation obtained by the school district, the parent has the right to obtain an independent educational evaluation at public expense. However, the school district may initiate an impartial hearing to show that its evaluation is appropriate and, if the impartial hearing officer determines that the evaluation is appropriate, the parent still has a right to an independent evaluation, but not at public expense. Upon request, the parent must be provided the names, addresses, and telephone numbers of appropriate public and private agencies and other professional resources where independent educational evaluations may be obtained. Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria which the school district uses when it initiates an evaluation. (8NYCRR 200.1(u) and 200.5(a)). An independent educational evaluation obtained by the parent must be considered by the CSE/CPSE as part of its evaluation for review, and may also be presented as evidence at an impartial hearing. In addition, regarding preschool students with disabilities, Section 4410(4)(f) of the Education Law and Section 200.16(c)(4) of the Regulations indicate that if the parent disagrees with the evaluation, the parent may obtain an independent evaluation at public expense to the extent authorized by Federal law and regulation.

Impartial Due Process Hearing

Pursuant to Sections 200.5(c) and 200.16(h)(7) of the Regulations, the parent or legal guardian may request, in writing, an impartial due process hearing upon the receipt of a CSE/CPSE notice prior to initial evaluation, review or reevaluation; upon the receipt of a CSE/CPSE notice of the recommendation provided to the Board of Education; upon receipt of a notice from the Board of Education that the CSE/CPSE recommendation has been rejected or modified; or if the CSE/CPSE fails to make a recommendation, or the BOE fails to effectuate the recommendation of the Committee within specified time lines. The parent may request an impartial hearing on any matter concerning the identification, evaluation, educational placement or the provision of a free appropriate public education in the least restrictive environment.

The Board of Education must initiate an impartial hearing in the following instances:

- for school-age students, if the parent and referring party do not agree that the referral is unwarranted and if the parent continues to withhold consent for initial evaluation for a period of 30 school days after the CSE notification provided upon referral, requesting parental consent for evaluation. The impartial hearing would be conducted for the purpose of determining whether such an evaluation should be conducted without parental consent; (8NYCRR 200.5(b)(2))

- for preschool and school-age students, when a parent requests that an independent educational evaluation be conducted at public expense, and the local school district believes that its evaluation is adequate and that an independent educational evaluation is unnecessary. The BOE must initiate an impartial hearing to resolve the issue; (8NYCRR 200.5(a)(1)(vi)) and
- for school-age students, if the parent does not consent for an initial placement in special education within 30 days of the notice of recommendation. The BOE must initiate an impartial hearing to determine if such placement is warranted without parental consent. (8NYCRR 200.5(b)(3))

When an impartial hearing is requested by either the school district or the parent, the parent must be given notice regarding free or low-cost legal and other relevant services which may be available at no expense to the school district. Such notice must include the names, addresses and telephone numbers of appropriate agencies and other professional resources where such services may be obtained. (8NYCRR 200.5(c) and 200.16(h)(7)) The school district is responsible for conducting the hearing and all the administrative costs of an impartial hearing for school-age children. The Board of Education or trustees of each school district must maintain a list of the names and resumes of persons appearing on the list of impartial hearing officers certified by the Commissioner from which the district must appoint the first available impartial hearing officer according to a rotational selection process. (8 NYCRR 200.2 (e)(1)) For impartial hearings regarding preschool children, the school district incurs such administrative costs in the first instance, but is totally reimbursed, since such costs are ultimately borne by the State Education Department (50 percent) and the municipality (50 percent).

Impartial Hearing Officer

Impartial Hearing Officer (IHO) is defined in Section 200.1(p) of the Regulations as one who is assigned by a Board of Education pursuant to Section 4404(1) of the Education Law, or by the Commissioner of Education in accordance with Section 200.7(d)(3) of the Regulations, to hear an appeal and render a decision. An impartial hearing officer must be independent, not an officer, employee or agent of the school district or of the Board of Cooperative Educational Services (BOCES) of which the school district is a component, or an employee of the State Education Department, shall not have a personal or professional interest which would compromise objectivity in the hearing and must not have participated in any manner in the formulation of the recommendation sought to be reviewed. Individuals must be certified by the Commissioner of Education as an impartial hearing officer in order to serve in such capacity. In order to obtain and retain IHO certification, an individual must successfully complete a training program, conducted by the SED, regarding State and Federal laws and regulations relating to the education of students with disabilities, the needs of such students, and the procedures involved in conducting a hearing, and providing experience in reaching and writing a decision. Also required in order to obtain such certification, is the successful completion of a comprehensive written examination designed to evaluate the participant's knowledge and skills relating to the responsibilities of an IHO, and in order to retain such certification the individuals must attend periodic update programs as scheduled by the Commissioner of Education. Impartial hearing officers receive appropriate memoranda and update information disseminated by OSES. Consistent with the requirement to ensure impartiality in the hearing process, each hearing officer must, at the commencement of an impartial hearing, disclose to the parties involved any potential conflict of interest which might compromise his/her impartiality. At such time, either party may object to the continued service of the IHO. Upon the objection of a party, the IHO must make a decision whether or not to proceed with the hearing. If upon such an objection the IHO decides to proceed with the hearing, the party or parties may raise impartiality as an issue upon appeal to the State Review Officer.

Hearing Rights

Pursuant to Section 200.5(c) of the Regulations, an impartial hearing must be conducted in accordance with the following rules:

- The Board of Education must appoint the first available impartial hearing officer according to a rotational selection process to conduct the hearing. The IHO is authorized to administer oaths and issue subpoenas in connection with the proceeding (Note: parties may also compel the attendance of witnesses via subpoena issued by a court of competent jurisdiction).
- A written or electronic verbatim record of the proceedings before the impartial hearing officer must be maintained and made available to the parties.
- At all stages of the proceeding, where required, interpreters of the deaf, or interpreters fluent in the dominant language of the student's home, must be provided at school district expense.
- The IHO will preside at the hearing and provide all parties an opportunity to present evidence and testimony.
- The parties to the proceeding may be represented by legal counsel, or by individuals with special knowledge or training with respect to children with disabilities, or by any other persons of their choice.

- In the event the impartial hearing officer determines that the interests of the parent are opposed to or inconsistent with those of the child, or that for any other reason the interests of the child would be best protected by appointment of a guardian ad litem, the impartial hearing officer must appoint a guardian ad litem to protect the interests of such child, unless a surrogate parent has previously been assigned. Pursuant to Section 200.1(rr) of the Regulations, guardian ad litem means a person familiar with the provisions of the Part 200 Regulations who is appointed from the list of surrogate parents or who is a pro bono attorney appointed to represent the interests of a student in an impartial hearing and, where appropriate, to join in an appeal to the State Review Officer initiated by the parent or Board of Education. Such an individual has the right to fully participate in an impartial hearing by presenting evidence, confronting and questioning all witnesses, and prohibiting the introduction of any evidence the substance of which has not been disclosed at least five days prior to the hearing. The IHO must ensure that the procedural due process rights guaranteed to the child's parent, pursuant to Section 200.5 of Regulations, are preserved throughout the hearing whenever a guardian ad litem is appointed.
- The impartial hearing shall be closed to the public unless the parent requests an open hearing.
- The parents, school district and the respective counsel or representatives must have an opportunity to present evidence and to confront and question all witnesses at the hearing. Each party must have the right to prohibit the introduction of any evidence, the substance of which has not been disclosed to them at least five days before the hearing.
- The parents must have the right to determine whether the child will attend the hearing.
- The impartial hearing officer must render a decision, and mail a copy of the decision to the parents, to the Board of Education, and to the Office for Special Education Services of the State Education Department, not later than 45 calendar days after the receipt by the Board of Education of a request for a hearing or after the initiation of such a hearing by the Board. All personally identifiable information shall be deleted from the copy forwarded to the Office of Special Education Services. The decision of the IHO must be based solely upon the record of the proceeding and must cite the reasons and the factual basis for the determination. If an IHO requests an independent evaluation, it must be provided at public expense as required by CFR 300.501. The decision of the IHO is final unless appealed and must include a statement advising the parents and the BOE of the right to obtain a review conducted by the State Review Officer (SRO) of the State Education Department.

The State Education Department makes the findings and decisions of the impartial hearing officer available to the general public, after it has deleted personally identifiable information, through written requests to the State Education Department. Copies of the findings of fact and decisions of impartial hearings conducted in New York State are transmitted to the Commissioner's Advisory Panel.

Hearing Decision/Administrative Appeal

New York State has adopted two separate procedures to review IHO decisions. Pursuant to Section 200.7(d)(3) of Regulations, regarding State-operated and State-supported schools, a one-tier hearing process has been established to resolve disputes in cases where the Commissioner of Education declines to make State appointment to such schools, or seeks to change the child's classification or placement against the recommendation of the State-operated or State-supported school which the child attends. The determination of the impartial hearing officer regarding such disputes is not subject to review by the State Review Officer (SRO) of the State Education Department. This process has been adopted because the impartial hearing decision directly concerns the actions of the persons under the State Education Department's supervision, and review of such a decision by the SRO of the State Education Department would be inappropriate. Review of the determination of the IHO is available by means of a proceeding pursuant to Article 78 of the Civil Practice Law and Rules or 20 USC 1415, and may be instituted by any party to the hearing. The decision of the IHO is final unless a civil action is filed by either party.

In other cases, pursuant to Sections 200.5(d) and 200.16(h)(8) of the Regulations, a two-tier hearing process is established for review of an impartial hearing officer's decision rendered in accordance with Sections 200.5(c) and 200.16(h)(7) of such Regulations. Such a review may be obtained by either the parent or Board of Education by commencing an appeal to the State Review Officer of the State Education Department. Such a review must be initiated and conducted in accordance with Parts 276 and 279 of the Regulations.

Section 279.1 of the Regulations establishes the State Review Officer as an employee of the State Education Department who is designated by the Commissioner of Education to conduct impartial State-level reviews pursuant to Section 4402(2) of the Education Law of IHO decisions related to the identification, evaluation, program or placement of a student with a disability. The sole function of the SRO pertaining to special education, is to issue decisions from appeals of impartial hearing officers. The SRO functions independently of any of the State Education Department's policy-making or policy functions regarding special or regular education and is responsible for making an independent decision of the appeal upon completion of the review. The parent of the child has the right to challenge the impartial-

ity of the State Review Officer by initiating an appeal through the judiciary system and must be notified of such right by the State Review Officer.

In initiating an appeal to the State Review Officer, the party seeking review (petitioner) must file with the Office of Counsel of the State Education Department a petition for review, including any written argument, memorandum of law, and additional documentary evidence. (8NYCRR 279.4) The responding party (respondent) must answer the petition of the petitioner by also sending to the SED Office of Counsel, a statement of facts concurring with the petitioner or by service of an answer with any written argument, memorandum of law, and additional documentary evidence. (8NYCRR 279.5) No pleading other than the petition or answer will be accepted or considered by a SRO of the State Education Department, except a response by the petitioner to any additional documentary evidence served with the answer. (8NYCRR 279.6) It is the responsibility of the Board of Education, whether it is the petitioner or the respondent, to file with the Office of Counsel of the State Education Department, a copy of the written transcript of the record before the impartial hearing officer and the decision of the impartial hearing officer, together with the petitioner answer submitted on behalf of such Board for examination of the entire hearing record and to insure that the procedures at the hearing were consistent with the requirements of due process by the SRO. (8NYCRR 279.7) Oral argument before the SRO by the parties is not permitted. In the event that the SRO determines that additional oral evidence is necessary, the State Review Officer will direct that a hearing be held to receive such additional evidence. (8NYCRR 279.8) If a hearing is held to receive additional evidence, the rights under 200.5 of the Regulations of the Commissioner apply. The SRO will make an independent decision after a complete review of the entire hearing record. A copy of the written findings and decision of the State Review Officer is mailed to the parties in the appeal. (8NYCRR 200.5(d))

Civil Action

The decision of the State Review Officer is based solely upon the record and is final unless appealed through the judiciary system. (8NYCRR 279.10) Any party aggrieved by the findings and decision made at a hearing who does not have the right to an appeal under the State Review Officer, and any party aggrieved by the decision of the State Review Officer has the right to bring a civil action filed in either State or Federal court pursuant to Article 78 of Civil Practice Law and Rules or 20 USC Section 1415 (8NYCRR 200.5(d)) The written decision of the State Review Officer, a copy of which must be mailed to the parent and the Board of Education, shall be final, provided that either party may seek judicial review by means of a proceeding pursuant to Article 78 of the Civil Practice Law and Rules or USC Section 1415. (8NYCRR 200.5(d)) Copies of the decisions of the State Review Officer are available to the public through the Special Education Training and Resource Centers (SETRCs) located throughout the State.

Time Lines and Convenience of Hearings and Reviews

For school-age students, the impartial hearing officer must render a decision, and mail a copy of the written findings of fact and the decision to the parents, to the Board of Education, and to the Office for Special Education Services of the State Education Department, not later than 45 calendar days after the receipt by the Board of Education of a request for a hearing or after the initiation of such a hearing by the Board. (8NYCRR 200.5(c)(10)) For preschool students, the IHO must render a decision of the written findings of fact and decision, and mail copies of the written findings of fact and the decision to the parents, to the BOE, and to OSES, not later than 30 calendar days after receipt of the parent request or after the initiation of such hearing by the Board of Education. (NY Educ L Sec 4410(7)(b)) and (8NYCRR 200.16(h)(7)) Upon the request of either party, an IHO may extend time lines in due process hearings for specific periods of times. Hearings must be conducted at a time and place which is reasonably convenient to the parents and student involved. Impartial hearing officers are required to submit an IHO Report Form, in addition to filing their Finding of Fact and Decision in a hearing, with the OSES. Timeliness in conducting hearings is monitored through the information required on the IHO Report Form.

Pursuant to Section 279.2(b) of the Regulations, a party seeking review of an impartial hearing officer's decision by the State Review Officer must initiate such an appeal within 30 days of the receipt of the IHO decision by submitting a notice of intention to seek review to the other party. The State Review Officer must render a decision, and mail a copy of the decision to the parent and Board of Education not later than 30 days after the receipt of the request for review. (34 CFR 300.512) Upon the request of either party a review officer may grant specific extensions of time beyond the required periods of 30 days for a review. Reviews involving oral arguments must be conducted at a time and place which is reasonably convenient to the parents and student involved. (8NYCRR 279.8)

In order to further ensure timeliness of a hearing, recent amendments to Section 275 of Education Law have shortened the time in which papers are submitted in appeal brought pursuant to Section 310 of Education Law regarding matters related to the provision of a free appropriate public education. This will ensure conformity with the time periods that apply to appeals brought pursuant to Section 4404 of Education Law and that a final determination is rendered on the merit of the appeal in a timely manner.

Children's Status During Proceedings

During the pendency of any proceedings conducted on behalf of school-age students who have or are suspected of having an educational disability, unless the Commissioner of Education or local Board of Education and the parents otherwise agree, the student will not be evaluated (if evaluation is the basis for the proceedings) and will remain in the then current educational placement, or, if applying for initial admission to public school, will be placed in the public school program until all such proceedings have been completed. (NY Educ L Sec 4404(4)) and (8NYCRR 200.5(a)(2)(iii))

In regard to preschool children who have or are suspected of having an educational disability, during the pendency of any due process proceedings, those preschool children with disabilities who are receiving special education programs or services pursuant to Section 4410 of the Education Law must remain in the then current education placement of such preschool child until all such proceedings have been completed. However, a student with a disability may not remain in a preschool program not approved for school-age students for which he or she is no longer eligible pursuant to Section 4410(6)(c) of Education Law during the pendency of proceedings. During the pendency of any due process proceedings on behalf of a preschool child not receiving special education programs and services pursuant to Section 4410 of the Education Law, if the Commissioner of Education or local Board of Education and the parent(s) or legal guardian agree, the preschool child may receive approved special education programs and services until all such proceedings have been completed. (8NYCRR 200.16(h)(2)(ii) and (iii))

Surrogate Parents

Where a student's parents (as defined in 8NYCRR 200.1(aa)) are unknown or unavailable, or where the student is a ward of the State, the Board of Education or other appropriate body shall select a surrogate parent from a list of individuals who are eligible and willing to serve as surrogate parents. (8NYCRR 200.5(e)(3)) The role of the surrogate parent is to represent the student in all matters relating to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the student. (8NYCRR 200.1 (aa) and 200.5(e)(3))

Pursuant to Sections 200.5(e)(2) and 200.16(h)(9) of the Regulations, assignment of a surrogate parent to a particular student must be made in accordance with the following procedures:

- Any person whose work involves education or treatment of children who knows of a student who may need special education services, and who knows that the parents or guardians are not known and after reasonable efforts cannot discover the whereabouts of a parent, or that the student is a ward of the State, may file a request for assignment of a surrogate parent to the student, with the Committee on Special Education (CSE) or Committee on Preschool Special Education (CPSE) to which the student may be appropriately referred. A ward of the State is defined as a person placed by the court under the care of a guardian. A child is deemed a ward of the State when parental rights have been terminated through Family Court proceedings and guardianship is awarded to the Department of Social Services or another appropriate State agency.
- The CSE/CPSE must send notice of the possible need for a surrogate parent to the adult in charge of the student's place of residence and to the parents or guardians at their last known address.
- The CSE must determine, within a reasonable time following receipt of the request, whether the parents or guardians are unknown or unavailable, or whether the student is a ward of the State. If the CSE/CPSE finds that there is a need for a surrogate parent, such assignment must be made by the Board of Education within 10 days of the date of the determination by the CSE/CPSE.
- The surrogate parent, once assigned, must represent the student at least through the time of the first periodic review of the student's educational placement.

Pursuant to Section 200.5(c)(6) of the Regulations, in the event an impartial hearing officer determines at an impartial hearing, that the interests of the parent are opposed to or inconsistent with those of the student, or that for any other reason the interests of the student would best be protected by appointment of a guardian ad litem, the impartial hearing officer is authorized to appoint a guardian ad litem to protect the interests of such student, unless a surrogate parent has previously been assigned. The IHO must ensure that the procedural due process rights guaranteed to the student's parent are preserved throughout the hearing whenever a guardian ad litem is appointed. In addition, such appointment of a guardian ad litem in no way relieves the CSE, the CPSE or BOE of the obligation to afford the parents all the procedural safeguards guaranteed them by Federal and State laws and regulations.

Pursuant to Section 200.5(e)(1) of the Regulations, persons selected as surrogate parents may not be an officer, employee, or agent of the school district or State Education Department or other agency involved in the education or care of the child. A surrogate parent is not an emplovee of the school district solely because he/she is paid by the school district to serve as a surrogate parent. Surrogate parents must, to the extent possible:

- have no other interest which could conflict with primary allegiance to the student they would represent;

- be committed to becoming personally and thoroughly familiar with the student and the student's educational needs;
- be of the same racial, cultural, and linguistic background as the student they seek to represent; and
- be generally familiar with the educational options available to students with disabilities.

OSES Complaints Procedures

The Office for Special Education Services (OSES) has established procedures to investigate complaints received from individuals, on their own behalf or on behalf of an organization they represent, regarding policies and/or procedures of the SED, a school district, a BOCES, a State-supported or State-operated school, an approved private school, or other subgrantee felt to be in violation of any Federal or State law or regulation pertaining to students with disabilities.

A complaint must be submitted in writing, and include the following:

- the name and address of the complainant;
- the name and address of the subgrantee; and
- a description of the alleged violation(s) by the subgrantee.

All complaints must be signed by the complainant, and should be submitted to the State Education Department, Office for Special Education Services, Education Building Annex, Room 1073, Albany, NY 12234.

The New York State Education Department will acknowledge receipt of the complaint and will act to resolve a complaint within 60 calendar days after it is received by OSES. An on-site investigation may be conducted by the OSES, DPM staff (regional associates) if warranted. The Director of the DPM, who is responsible for regional associate staff will assign appropriate staff to ensure that the complaint is fully addressed in a timely manner. The 60-day time period for resolving complaints will be extended only if exceptional circumstances exist with respect to a particular complaint. The DPM will provide a written report to the Assistant Commissioner of OSES, the complainant within 60 days of receipt of the complaint and the subgrantee. The written report will include, but not be limited to, the issue(s) upon which the complaint was submitted, a statement of findings, and the manner in which the complaint has been resolved. The letter of findings to the complainant must indicate that if he/she is not satisfied with the results of the investigation, that an appeal may be submitted to the Director of the Office of Special Education Programs in Washington, DC. Monitoring will continue until the underlying complaint is fully resolved. Parents are informed of these procedures through various publications and training provided by OSES.

Special Education Mediation

In 1988, Section 4404-a was added to Article 89 of the Education Law and required the State Education Department, in consultation with the Office of Court Administration, to establish a Special Education Mediation Demonstration Program. The purpose of the Demonstration Program was to explore the feasibility of establishing a mediation process within the State's special education due process system to enhance communication between parents and school districts and facilitate agreement in a timely, cost effective and non-adversarial manner. At the close of the 1990-1991 school year, the demonstration program was operational in a total of 28 school districts in four State regions. Based upon a limited experience with success in the process of special education mediation (six mediations have been conducted, five were successful in resolving all issues), the continuing interest in the process by many not participating in the program, and the continuing enthusiasm of the Community Dispute Resolution Center mediators and school district staff participating in the demonstration program, the New York State Education Department, in consultation with the Office of Court Administration, the New York State Association of Community Dispute Resolution Centers and the Commission on Quality of Care for the Mentally Disabled, is continuing this demonstration program beyond the March 31, 1991, statutory end date. To obtain sufficient and appropriate information for the development of sound recommendations for future legislative and regulatory provisions addressing special education mediation, the OSES will continue this demonstration program until August 31, 1993, as follows:

- In participating school districts, parents of students with disabilities receive notice of the availability of special education mediation as an optional strategy for resolving areas of disagreement with the school district regarding the special education provided their children. This information is included with each notice of due process rights sent by the school district.
- Mediators will be neutral third party individuals who are skilled in dispute resolution techniques and are knowledgeable about issues relating to the rights and educational considerations of students with disabilities.
- At any time that a parent perceives the need for assistance in resolving an issue regarding their child's special education program, the parent may submit a written request to the school district for a special education mediation session. If a parent does not request mediation, but disagreement continues unresolved on an issue, a school district may recommend to the parent that mediation be used to reach agreement. A parent cannot be compelled under any circumstances, however, to participate in mediation if they choose not to do so.
- Regardless of the use of or the failure to use the mediation

process, a parent of a child with a disability maintains the right to access all other due process procedures afforded by law and regulation, including the right to request an impartial hearing to resolve disagreement.

- At a mediation session, the parties represent themselves, even if accompanied by an attorney. The content of the mediation process is confidential, with no record of the discussions maintained. The only written outcome of a mediation, other than a record of its occurrence, is a statement of any agreement that results from the process.
- If the parties agree to a modification of the special education program provided the child, a written agreement statement is signed at the session. Such agreement is binding on both parties. If one party is unable to provide final agreement at the session, they may enter a conditional agreement, providing a specified period of time by which an agreement or a lack of agreement is finalized. Agreement may be reached on all, some or none of the issues raised at the mediation session.

New York State Initiatives to Enhance Standards

Between December 1990 and March 1991, the Office for Special Education Services proactively conducted a comprehensive review of the full and equitable provision of due process rights to all students with disabilities and their parents by holding eighteen regional public hearings throughout the State. These hearings were attended by 209 individuals, many of whom provided oral and/or written information to identify components of the system which are effective and should be continued, as well as to articulate alternative recommendations for those components which do not fully meet their intended purpose. Based on the information received from interested individuals, groups and agencies, the following actions and initiatives are being considered by the OSES to enhance the availability, impartiality, and effectiveness of procedural safeguards.

Appointment of Impartial Hearing Officers

- Procedures will be established so that school district Boards of Education will no longer be solely responsible for the selection and appointment of impartial hearing officers.
- Minimum qualifications and equivalent training standards will be established to determine eligibility for prospective impartial hearing officers. Such standards will address the extent to which individuals with professional educational backgrounds may serve as impartial hearing officers.
- Procedures will be established to suspend or revoke impartial hearing officer certification when it is determined that an individual lacks knowledge of or does not appropriately apply education laws, regulations or policies; conducts impartial hearings in a biased or otherwise inappropriate manner; does not attend update training programs or performs unsatisfactorily at such training programs; or is otherwise unable to appropriately complete impartial hearing officer responsibilities.
- Eligibility standards will be established for participation in the State Education Department training program which is necessary for IHO certification.

Special Education Mediation

- The Special Education Mediation Demonstration Program will be continued until 1995, expanding the number of New York State regions and school districts provided an opportunity to participate.

Parent Information

- The Office for Special Education Services will develop a brochure for school districts participating in the Special Education Mediation Demonstration Program, in order to assure that parents have access to and understand information regarding the availability and purpose of special education mediation. The brochure will use simple language, and include a question and answer section.
- To ensure that parents are adequately notified of their due process rights, the Office for Special Education Services will review due process notice documents used in other states. Based on such review, the OSES will determine whether a standard, mandatory State due process form should be established.

Implementation of Impartial Hearing Officer/State Review Officer Decisions

- Procedures will be established requiring that in cases where an impartial hearing officer or the State Review Officer renders a decision which requires action by the school district, the school district must submit a report to the State Education Department, indicating the date and manner in which such action was implemented.

Impartial Hearing Officer Decisions

- In order to provide equitable due process rights to all students with disabilities, the timeline specified in Section 4410(7)(b) of the Education Law and Section 200.16(h)(7) of Regulations will be amended to require that the decision of an impartial hearing officer, in matters pertaining to preschool special education, be rendered within 45 calendar days after the receipt by the Board of Education of a request for an impartial hearing or after the initiation of such a hearing by the Board, consistent with the current requirements for impartial hearings for school-age students.

VI. CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION

The New York State Education Department disseminates many informative publications regarding confidentiality and student records. The State Archives and Records Administration (SARA) of the State Education Department has published three documents to assist school districts and the Education Department in managing records: *Managing Local Government Records: A Manual for Local Government Officials in New York State* (Albany, 1985), *Records Retention and Disposition Schedule, ED-1 for use by School Districts and BOCES* (Albany, 1988), and SARA Information Leaflet No. 2, *The Records Management Officer in Local Government*. Each school district or BOCES governing body must formally adopt a resolution regarding records retention and distribution and appoint a Records Management Officer. This resolution should include the adoption of the *Records Retention and Disposition Schedule, ED-1*.

Notice to Parents

Section III of this *State Plan*, entitled "Child Identification," describes the various ways the State Education Department meets the requirements of 34 CFR 300.128. In addition to required notices, parents also receive information on confidentiality and access to records through other materials disseminated by school districts and SED including the Department publication, *A Parent's Guide to Special Education*. This manual is distributed to parents pursuant to Section 4403 of the Education Law. Section 200.2 of the Regulations requires BOEs to establish administrative practices and procedures regarding confidentiality of personally identifiable data, information or records pertaining to a student with a disability in accordance with Section 300.560-300.575 and Part 99 of Title 34 of the Code of Federal Regulations. (8NYCRR 200.2(b)(6)) This ensures that parents receive notice which fully informs them about the requirements under Section 300.128 including a description of the extent to which notice is given in the native languages of various population groups; a description of the children on whom personally identifiable information is maintained, the types of information sought, the methods used to gather information and the uses to be made of the information; a summary of the policies and procedures which must be followed regarding storage, disclosure, retention, and destruction of personally identifiable information; and a description of all the rights of parents and children regarding this information including the rights under Section 438 of the General Education Provisions Act and Part 99 of Title 34 of the Code of Federal Regulations. Before any major identification, location or evaluation activity, the notice must be published or announced in newspapers or other media or both with circulation adequate to notify parents.

Access Rights

Information on the parent's right to inspect and review any education records relating to their child which are collected, maintained, or used is assured in Section 200.5(a)(1) and 200.2(b)(6) of the Regulations of the Commissioner. An agency must comply with a parental request to inspect and review any education records collected, maintained, or used by the agency without unnecessary delay and before any meeting regarding an individualized educational program or hearing relating to the identification, evaluation, or educational placement of the child or the provision of FAPE to the child and in no case more than 45 days after the request has been made. Parents have the right to inspect and review educational records; to a response from the participating agency to reasonable requests for explanations and interpretations of the records; to request that the agency provide them with copies of the records containing the information if failure to provide those copies would effectively prevent the parents from exercising the right to inspect and review the records and to have a representative of the parent inspect and review the records. A parent has the authority to inspect and review their child's records unless the agency has been advised that the parent does not have the authority under State law governing such matters as guardianship, separation, or divorce. The parent handbook, entitled *A Parent's Guide to Special Education* developed by the Office of Special Education Services (OSES), also describes parental rights in regard to access of records (see page 35, paragraph 2); it is the policy of the

NYSED [and the OSES] to require districts to adhere to the requirements of the *Family Education Rights and Privacy Act* (FERPA) and Sections 300.560-300.575 of Title 34 of the Code of Federal Regulations regarding a parent's access to records and to monitor accordingly. In addition, according to Section 200.5(f) of the Regulations, private schools as defined in Section 200.7 of the Regulations are also subject to the provisions of Sections 300.560-300.575 and Part 99 of title 34 of the Code of Federal Regulations. (8NYCRR 200.2(b)(6) and 8NYCRR 200.7(b)(2)

Records of Parties Obtaining Access

Under Article 57-A Local Government Records Law each school district appoints a records management officer who is responsible for keeping a record of persons accessing educational records including the name of the person, the date access was given, and the purpose for which the person was authorized to use the records.

Records of More Than One Child

Districts must adhere to the requirements of 34 CFR 300.564 to ensure the confidentiality of records of more than one child and to monitor compliance accordingly. (8NYCRR 200.2 (b)(6)) In addition, according to Section 200.5(f) of the Regulations, private schools as defined in Section 200.7 of the Regulations are also subject to the provision of 34 CFR Part 99.

List of Types and Location of Information

Consistent with 8NYCRR 200.2(b)(6) the NYSED requires districts to adhere to the requirements of 34 CFR 300.565 regarding the list of types and location of information and to monitor compliance accordingly. In addition, according to Section 200.5(f) of the Regulations, private schools as defined in Section 200.7 of the Regulations are also subject to the provisions of 34 CFR Part 99.

Fees

School files, records, and reports are available for duplication for a parent at a reasonable fee, if the fee does not effectively prevent the parents from exercising their rights to review and inspect those records. There cannot be a fee for a search or retrieval of information. However, the parent notice must indicate what the cost will be for duplication of the record. (8NYCRR 200.5(a)) and (CFR Part 99.11)

Amendment of Records

Section 99.20 of the FERPA states that, if a parent or eligible student believes that information in a student's record is inaccurate or misleading or in violation of the student's rights, a record amendment may be requested. The local education agency or institution decides in a timely manner whether to amend the record and informs the parent of its decision and his/her right to a hearing if the agency refuses to amend the record. This policy has been adopted by the SED and the OSES and is monitored accordingly.

Opportunity for a Hearing

A parent or eligible student may request a hearing to be conducted by the educational agency to challenge the content of a student's education record if the information contained in the education record is believed to be inaccurate, misleading, and/or violates a student's rights. (34 CFR Part 99.21) This policy has been adopted by the SED and the OSES and is monitored accordingly.

Result of Hearing

In accordance with FERPA, if, as a result of a hearing, the information in a student's record is deemed inaccurate, misleading or in violation of a student's rights, the record must be amended and the parent must be informed in writing of the amendment. If the decision of the hearing is not to amend the student's record, then the parent or student must be informed of the decision in writing and of their right to add a statement in the record regarding the contested information. This statement must be maintained as part of the record for as long as the record or contested portion is maintained by the agency and if the records are disclosed, the statement must be included. (34 CFR Part 99.21) This policy has been adopted by the SED and the OSES and is monitored accordingly.

Hearing Procedures

The minimum requirements for conducting a hearing with regard to timelines, notice, hearing officer, presentation of evidence, written decision, and basis for decisions are specified in Section 99.22 of FERPA and must be met by educational agencies as required by SED policy.

Consent

Prior consent must be obtained in order to disclose informa-

tion except as specified in 34 CFR Part 99.31. An educational agency may not release information from educational records unless authorized under 34 CFR Part 99 to do so. School districts must meet the requirement according to SED and OSES policy which requires compliance with FERPA and 34 CFR 300.571. (8NYCRR 200.2(b)(6)) An educational agency or institution may disclose personally identifiable information from an education record of a student without prior consent of a parent or an eligible student if the disclosure meets one or more of the conditions under 34 CFR Parts 99.31, 99.36, or 99.37. In the event parental consent is required to release information and a parent refuses to provide consent under 34 CFR 300.571, the following applies:

- an educational agency or institution must document its attempts to obtain written parental consent. Written parental consent under 34 CFR 99.30 must specify the records that may be disclosed, state the purpose of the disclosure, and identify the party to whom the disclosure may be made; and
- the educational agency or institution will not release any personally identifiable information, as required by FERPA, unless parental consent has been obtained.

Safeguards

Personally identifiable data must be maintained in a manner that assures confidentiality and security. Procedures regarding confidentiality during the storage, disclosures, destruction, and maintenance of student records or personally identifiable documents must be carefully implemented. FERPA requires that a list of persons identified by name and title who have access to student records must be prepared and posted for public inspection. A list identifying the types of records maintained by the school, their location, and responsible officials must be prepared and posted for public inspection. Schools must comply with Section 99.35 of the FERPA regarding training and instruction on the collection and use of personally identifiable information. In addition, Section 200.2(a)(3) of the Regulations requires that all persons involved with the collection of data receive prior training and written information regarding data collection. The educational agency, as specified in 34 CFR Part 99.6, must also list the officials responsible for record maintenance. School districts must comply with Section 300.572 of Title 34 of the Code of Federal Regulations. (8NYCRR 200.2(b)(6))

Destruction of Information

Student records may be disposed of according to schedules established by the New York State Archives and Records Administration (SARA) of the State Education Department pursuant to Section 57.25 of the Arts and Cultural Affairs Law, and Part 185, Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York. These schedules appear in the document, *Records Retention and Disposition Schedules ED-1*, which must be adopted by the Boards of Education of the respective educational institution to dispose of any records.

Children's Rights

FERPA defines an "eligible student" as a student who has reached age 18 or is attending an institution of postsecondary education. Rights of eligible students as specified in Section 99.5 of FERPA are similar to those afforded to parents and must be met by school districts according to SED and OSES policy which requires compliance with FERPA.

Enforcement

The *Program Review Guide: A Manual of Standard Operating Procedure* describes the policies and procedures the State uses to ensure compliance with State and Federal laws and regulations. Site visits for the purpose of program reviews are scheduled to take place routinely. The review process culminates in a final written report. A district/program must submit documentation that it has corrected all compliance issues. Follow-up visits by staff of the Division of Program Monitoring of OSES are regularly scheduled to determine whether approved compliance plans have been appropriately implemented. Sanctions for noncompliance include fiscal and programmatic remedies.

State Education Department

It is the policy of the SED to assure that if personally identifiable information is collected by the agency or its authorized representatives regarding children with disabilities which is not subject to 5 U.S.C. 552a (The Privacy Act of 1974), that the requirements of 5 U.S.C. Section 552a (b) (1)-(2), (4)-(11); (c); (d); (e)(1); (2); (3)(A), (B) and (D), (5)-(10); (L); (M); and (N), and the corresponding regulations implementing these provisions shall apply.

VII. LEAST RESTRICTIVE ENVIRONMENT

General

In accordance with 34 CFR 300.550 New York State assures that each public agency providing special education programs and services to students with disabilities in public or private institutions, or other care facilities must, to the maximum extent possible appropriate to the needs of the student, provide for the education of such students with their peers who are not disabled. (NY Educ L Secs 3202(5), 4002(2), 4401 and 4410) and (8NYCRR 200.1(y), 200.7(c) and 200.16(d)) Special classes, separate schooling or other removal from the regular educational environment may occur only when the nature and severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be satisfactorily achieved.

Consistent with Federal law and regulation, the determination of programs, service(s) and placement must be based on the individual needs of each student. The selection of a placement alternative is also governed by the consideration of the proximity of the placement to the student's home or other place of residence. Special education services and programs will be provided only after the appropriateness of the resources of the regular education program, including educationally related support services, speech and language improvement services, and remedial instruction have been considered. (NY Educ L Sec 4401-a(5)) However, the continuum of services described in the following section must be made available based on each student's IEP. Unless a student's IEP requires some other arrangement, a student is educated in the school which he or she would attend if not disabled. In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services he/she needs.

For preschool students, ages 3 through 5, the school district must establish administrative practices and procedures which ensure that each preschool student with a disability, residing in that school district, has the opportunity to participate in preschool programs pursuant to Section 200.16(i) of the Regulations of the Commissioner of Education to the extent that the preschool program is within a reasonable distance from the preschool child's care location. The Committee on Preschool Special Education (CPSE) is responsible for determining eligibility for preschool special education and for recommending an individualized education program (IEP), including the appropriate provision of services and programs in the least restrictive environment. (8NYCRR 200.2(b)(2) and 200.16(d)(3)(iv)) and (NY Educ L Sec 4410(5)(b)(i))

The Continuum of Programs and Placements for Students with Disabilities

New York State has established an extensive continuum of placements, programs and services to ensure that each student with a disability receives a free appropriate public education in an environment which is least restrictive based on individual needs. The full continuum for school-aged students with disabilities, as detailed in Sections 4401 and 4402 of New York Education Law and Sections 100.2, 200.1 and 200.6 of the Regulations, must be available to all such students who are eligible for a free appropriate public education to the extent necessary to implement their Individualized Education Program (IEP), regardless of where they reside or the circumstances under which they have been placed for care. Placement decisions are made according to State requirements consistent with Section 300.533 of Part B which is fully described in the section of the *State Plan* entitled, "Protection in Evaluation Procedures."

The continuum includes programs, services and activities available to the general student population, as well as programs and services for which eligibility for special education is required. Sections 100.2(k) and 100.2(s)(1) of the Regulations indicate that no student may be denied membership or participation in curricular or extracurricular activities on the basis of race, sex, marital status, color, religion, national origin, or disability. Section 200.2(b)(1) of the Regulations requires that each Board of Education (BOE) adopt written policy which

establishes administrative practices and procedures to ensure that students with disabilities have the opportunity to participate in school district programs, including extracurricular programs and activities, which are available to all other pupils enrolled in the public schools in the district. Students with disabilities, therefore, may access regular education programs and activities designed for accelerated students and for average students, as well as modified regular education programs and activities, guidance and remedial education programs designed for students with educational difficulties.

The Part 100 Regulations include services which school districts provide to students in order to remediate educational deficits before they develop into educational disabilities or to expedite and facilitate the declassification of students with disabilities and bring about their full-time enrollment in regular education. These services include:

- Speech and Language Improvement Services which may be provided to eligible students in grades kindergarten through six, who have speech impairments such as disfluency, impaired articulation, language disorders, or voice disorders of a severity that do not adversely affect educational performance, but do present a barrier to communication; (8NYCRR 100.1(p) and 100.2(t))
- Educationally Related Support Services to provide assessment and noncareer counseling services to eligible students, either individually or in groups, and related consultation services provided to their families and related school personnel, in order to enhance the academic achievement and attendance of such students; (8NYCRR 100.1(r) and 100.2(v))
- Declassification Support Services, which are provided as indicated on the IEP, to a student or such student's teacher to aid in the transition from special education to full-time enrollment in regular education. (8NYCRR 100.1(q) and 100.2(u))

Prior to referral, regular education staff are expected to make reasonable modifications of instructional techniques and materials in order to permit a student experiencing educational difficulties to appropriately remain and succeed in regular education without classification. For this reason, Section 200.4(a)(2)(ii) of the Regulations requires school staff to indicate at the time of a referral any attempts made to remediate the student's performance prior to such referral, including the use of supplementary aids or support services, or state the reasons why no such attempts were made.

New York State requires that each student with a disability participate in regular education programs and services to the full extent appropriate. Section 200.4(c)(2)(iv) of the Regulations requires that the IEP for each student with a disability include, in addition to special education programs and services, the extent to which the student will participate in regular education programs, including physical education and occupational education. To ensure their full participation in regular education programs, and the opportunity to succeed in such programs, students with disabilities must also be provided any specialized equipment or adaptive devices needed for them to benefit from education and the consistent use of alternative testing techniques to permit them to demonstrate acquired knowledge and skills as specified in their IEPs. (8NYCRR 200.4(c)(2)(vi) and (vii)) Moreover, the instructional techniques and materials used by schools must be modified to the extent appropriate to provide the opportunity for students with disabilities to meet diploma requirements. At each annual review of the student's IEP, the Committee on Special Education (CSE) must consider the appropriateness of such modifications. (8NYCRR 100.2(s)(2))

Special education programs and services which may be provided to eligible school-age students with disabilities include the following:

- Transitional Support Services—These temporary services are provided to a regular or special education teacher to aid in the provision of appropriate services to a student with disabilities transferring to a regular education program or to a program or service in a less restrictive environment. (8NYCRR 200.1(nn) and 200.6(b)(2)(c))
- Related Services—These services include speech pathology, audiology, psychological services, physical therapy, occupational therapy, counseling services, including rehabilitation counseling services, medical services, parent counseling and training, school health services, school social work, other appropriate developmental or corrective support services, appropriate access to recreation, and other appropriate support services which are provided to students with disabilities in order for them to benefit from their educational program. The frequency and duration of such service(s) must be indicated in the IEP and may be provided to students individually or in small groups not exceeding five students per teacher or specialist. More than one related service may be provided to a student, and such services may be provided in conjunction with a regular education program or with other special education programs and services. (8NYCRR 200.1(gg) and 200.6(d))
- Consultant Teacher Services—These services are provided to a student with a disability who attends a regular education program on a full-time basis. Such services may be provided either directly to the student, through individual or group instruction, to permit the student to benefit from the regular education program; or indirectly through the provision of consultation to the regular education teacher(s) to assist in adjusting the learning environment and/or modifying instructional methods to meet student needs. The total number of students with disabilities assigned to a consultant teacher may not exceed 20, and such services must be provided for a minimum of two hours each week per student. (8NYCRR 200.1(oo) and 200.6(k))

- Resource Room Programs—These programs are supplemental to the regular or special class instruction provided to students with disabilities. Such services must be provided for not less than three hours per week nor more than 50 percent of any school day to instructional groups of five or less students with disabilities who have similar educational needs. The total number of students with disabilities assigned to a resource room teacher shall not exceed 20, except that the total number of students with a disability assigned to a resource room teacher who serves students enrolled in grades 7 through 12 or a multilevel middle school program operating on a period basis shall not exceed 25. In the case of students in grades 7 through 12 who are in a multilevel middle school program (i.e., consisting of one or more grades below grades 7 and one or more grades 7 through 9), those students must receive such services for the equivalent of five periods per week, but not less than the equivalent of 180 minutes per week in a resource room or in special education services, including related services. (8NYCRR 200.1(hh) and 200.6(e)) and (NY Educ L Sec 3602(19))

- Special Classes—These programs are provided on a daily basis to students with disabilities who are grouped based on similar educational needs for the purpose of being provided a special education program. Based on student characteristics, there are five special class configurations available:

  — the maximum class size for students with special education needs, which consist primarily of the need for specialized instruction, is 15 students, except in the case of State-operated or State-supported schools where the maximum class size is set at 12 students;
  — the maximum class size for students whose management needs interfere with the instructional process, to the extent that an additional adult is needed to assist with instruction, may not exceed 12 students, with at least one paraprofessional assigned during periods of instruction;
  — for students with intensive management needs who require a significant degree of individualized attention and intervention, class size with eight students, one teacher, and one paraprofessional is authorized;
  — the maximum class size for students whose management needs are determined to be highly intensive, requiring a high degree of individualized attention and intervention, may not exceed six students, with at least one paraprofessional assigned to the class during periods of instruction. When a class is comprised entirely of students with autism, then Section 200.13 of the Regulations must be adhered to; and
  — the maximum class size for students with severe multiple handicaps, whose programs consist primarily of habilitation and treatment, may not exceed 12 students, with the addition of one staff person for each three students. (8NYCRR 200.1(jj) and 200.6(f))

- Home and Hospital Instruction—These services are provided for a minimum of 5 hours per week at the elementary level at preferably 1 hour per day or for a minimum of 10 hours per week at the secondary level at preferably 2 hours per day. (8NYCRR 200.6(g))

- In-state or Out-of-state Private Schools—These schools are approved by the Commissioner and provide programs which meet the needs of students with disabilities who have been determined to require such placements. The schools may be located in-state or out-of-state and may have day and/or residential components. (8NYCRR 200.6 (h))

- Twelve-Month Special Services and Programs—Students shall be considered for twelve-month special services and programs in accordance with their need to prevent substantial regression as determined by the CSE and provided with the frequency and duration of services and programs as specified in the student's IEP. (8NYCRR 200.6(j))

- Day Treatment Programs—These nonresidential programs, certified by the Office of Mental Health, are designed for the purpose of providing a comprehensive array of services for mentally ill students with disabilities through integrated mental health and special education programs. A treatment team composed of professional and paraprofessional clinical staff members of the day treatment program, including the child's special education teacher, develop a specific treatment plan which determines the child's need for mental health services and includes the provision of educational services.

- Transition Services - As defined under Section 200.1, transition services means a coordinated set of activities for a student with a disability, designed within an outcome-oriented process, that promotes movement from school to postschool activities, including, but not limited to, postsecondary education, vocational training, integrated competitive employment (including supported employment, continuing and adult education, adult services, independent living, or community participation). The coordinated set of activities must be based on the individual student's needs, taking into account the student's preferences and interests, and shall include needed activities in the following areas: (1) instruction; (2) community experiences; (3) the development of employment and other postschool living objectives; and (4) if appropriate, acquisition of daily living skills and functional vocational evaluation.

Preschool Special Education Services and Programs

Services and programs for the provision of special education

to preschool students with disabilities are approved by the Commissioner of Education consistent with the provisions of Section 4410(9) of Education Law. In order to be approved to provide such services and programs, each prospective provider must submit an application which includes, but is not limited to, a listing of the services to be provided, the population to be served, and plans for providing services in the least restrictive environment and a description of the evaluation component, if any. Pursuant to Section 200.16(i) of the Regulations, the continuum of service options for preschool children with disabilities follows:

- Related Services—Related services must be provided in accordance with 8NYCRR 200.6(d). Such services must be provided in conjunction with a program that has been approved by the Commissioner or, as authorized by NY Educ L Sec 4410, in conjunction with a program which has been approved or licensed by an appropriate government agency.
- Special Education Itinerant Services—These services must be provided by a preschool program which has been approved by the SED to provide consultant teacher and/or resource room services. Special education itinerant services are provided in conjunction with a program at a facility that has been approved or licensed by an appropriate governmental agency and involves the services of a special education teacher on an itinerant basis. These services can be offered in the following ways:
  - Consultant Teacher Services—These direct/indirect services are provided to a child's teacher or to a preschool child with a disability enrolled in a regular education preschool program which has governmental approval or licensure. Such services are to be provided in the child's regular education program and/or through consultation to the child's teacher by a special education teacher for a minimum of two hours per week; and
  - Resource Room Program—This supplemental instruction is provided by a special education teacher in a resource room designed for this purpose or in the regular preschool program. An instructional group which includes preschool children with disabilities in a resource room program may not exceed five children. The composition of instructional groups must be based on the similarity of the children's individual needs. A preschool child receiving resource room services may not spend more than 50 percent of the school day in a resource room program and must receive a minimum of two hours per week of resource room instruction;
- Special Class—This program is provided by a SED-approved preschool program and consists of a class with a maximum of 12 preschool children with disabilities. The class is staffed by at least 1 special education teacher and 1 paraprofessional. Preschool students with disabilities who receive special classes must be enrolled at least 2 1/2 hours per day, 2 days per week. The age range in a special class may not exceed 36 months unless a variance is granted by the Commissioner of Education. Special classes may also be in an integrated setting, which includes both nondisabled and disabled students and is housed in the same physical space as a preschool class of nondisabled students taught by another teacher.
- Home-Based Services—This special education program, provided at the child's home, includes at least two hours per week of special education services from a special education teacher. The provision of related services in accordance with the student's IEP must be provided in addition to the special education instructional program. Home-based services must be provided by SED-approved preschool programs;

  A combination home-based and center-based program may be provided to a preschool student with a disability who is making the transition from services provided in the home to services provided at a preschool program site. Special education services must be provided by an approved program for a minimum of two hours per week at home and at least three hours per week in the other location. The other site could be a SED-approved preschool special education program or a program at a facility that has been approved or licensed by an appropriate governmental agency. Such transition must be completed within one year or within a lesser period as indicated in the child's IEP. Transition programs must be provided by programs approved by the SED for such purpose.
- In-state Residential Special Education Programs and Services—Such programs and services must be provided for a minimum of five hours per day, five days per week to a preschool child for whom such services were recommended. Placement in such residential programs must be approved by the Commissioner in accordance with 8NYCRR 200.6(h).
- Twelve-Month Education—Twelve-month educational programs and services may be considered for the preschool child whose management needs are highly intensive, who is multiply handicapped and whose program consists primarily of habilitation or treatment, who has been recommended for home and hospital treatment and needs a high degree of individual attention and intervention, whose needs are so severe that they can only be met in a seven-day residential program, or whose disabling condition is severe enough to need a structured learning environment of twelve months.

Placements

Each local school district and other public agency responsible for the educational placement of a student with a disability must follow the procedures outlined in Sections 200.3, 200.4 and 200.5 of the Regulations of the Commissioner of Education. These sections describe the procedures for determining an

appropriate educational placement for a student which would include consideration of placement within regular education programs and extracurricular activities.

Each student's special education placement is based upon a completed IEP which is determined at least annually, as required by Section 200.4(c)(3), addresses the educational, physical, social, emotional, and management needs of the student. The school district must make available the full continuum of services listed in Sections 4401 and 4402 of Education Law and must provide services to the maximum extent appropriate in a manner which enables students with disabilities to participate in regular education services. The student's IEP must be reviewed by the CSE/CPSE at least annually, and include consideration to the educational progress and achievement of the student and the student's ability to participate in instructional programs in regular education. (8NYCRR 200.4) In addition to meeting the student's individual needs, the CSE/CPSE must consider in its deliberation that the student's placement is as close as possible to the student's home. Students are entitled to attend the public school which they would otherwise attend in the district in which they reside unless the student's IEP requires some other arrangements such as:

- Approved Education Programs and Services for Preschool Children with Disabilities
- A Neighboring School District
- Board of Cooperative Educational Services (BOCES)—Districts outside of the State's largest five cities are grouped regionally into supervisory districts called BOCES which provide a wide range of programs and services to students with disabilities.
- Special Act School Districts—These are districts which were created by special action of the State legislature for the purpose of providing education services to students with disabilities who reside in privately administered institutions for the care of children.
- Approved In-state and Out-of state Private Schools—Some students with disabilities may not be able to be served in public schools and must be provided programs within private schools for students with disabilities.
- State-Operated and State-Supported Schools—These schools are available for students with disabilities with individual educational needs that require a placement in a school which provides a specialized environment for students who are deaf, blind, severely physically disabled or severely emotionally disturbed. Some of these schools offer both day and/or residential programs.
- Schools Operated by Other State Agencies—These schools operate programs for students with disabilities whose individual needs require a program with intensive care components such as programs operated by:
  - Office of Mental Health (OMH)—operates psychiatric centers across the State and also licenses residential treatment facilities;
  - Division for Youth (DFY)—operates facilities for youth adjudicated through Family Court;
  - Department of Social Services (DSS)—provides a wide array of residential and community-based service programs for children with physical, mental or social disabilities. DSS is also responsible for placing children in child care institutions in accordance with Section 4005 of Education Law;
  - Office of Mental Retardation and Developmental Disabilities (OMRDD)- regulates and certifies facilities and programs which serve individuals who are mentally retarded or have developmental disabilities; and
  - Department of Correctional Services (DOCS)—oversees programs available to youths, ages 16 through 21, who are placed in correctional facilities.

(NY Educ L Secs 3202(1), 4402(1)(b)(2) and 4402(2)(a)(b)) and (8NYCRR 200.1, 200.4, 200.5 and 200.6)

Nonacademic Setting

Each BOE must maintain a written policy ensuring that students with disabilities residing in that district have access to and are provided appropriate accommodations to participate with students who do not have disabilities in school programs to the maximum extent appropriate to the needs of the student, including nonacademic and extracurricular programs and activities, which are available to all other pupils enrolled in the public schools of the district. (8NYCRR 200.2(b)(1)) Students with disabilities cannot be denied participation in any program or activity which is included in the school program of curricular or extracurricular activities, if appropriate to their educational needs. (8NYCRR 100.2(k)) Additionally, instructional techniques and materials must be modified to provide such students the opportunity to participate in school programs and services to the extent that such are appropriate to the student's special educational needs. (8NYCRR 100.2(s))

Students in Public or Private Schools

No student may be placed in a residential facility unless there is no appropriate nonresidential school available consistent with the needs of the student. (NY Educ L Sec 3202(1)) and (8NYCRR 200.4 and 200.5)

Section 200.2(c)(2)(iv) and (v) of the Regulations requires that school districts and Boards of Cooperative Educational Ser-

vices develop plans containing policies and practices regarding allocation of space for special education classrooms to ensure that students with disabilities are provided appropriate services and programs in the least restrictive environment. Section 200.2(g)(2)(iii)(b) also ensures that separate schooling or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of their disability is such that education in public school settings with supplementary aids and services can not be achieved satisfactorily.

Article 89 of Education Law outlines responsibilities of the education system for children with disabilities in the public school system, as well as for those students who are educated in settings outside of the public schools. Youth with handicapping conditions who are in correctional facilities include: those who are involved in the criminal justice system and are currently residing in correctional facilities; those students with handicapping conditions determined to be persons in need of supervision (PINS), juvenile delinquents (JD), or juvenile offenders (JO), and who are in the care or custody of State and local agencies; and those students who have dropped out of school or may drop out of school and are at risk of involvement with the judicial system. For youth with handicapping conditions in correctional facilities, juvenile detention facilities or other institutions, OSES is involved in reviewing the variety of residential settings and the educational programs being provided. Educational services in these settings are provided in a variety of ways. OSES monitors the adequacy of instructional programs in operation at such facilities.

Article 81 of New York Education Law describes the roles and responsibilities of public school districts and other public agencies in providing appropriate educational programs and services to students with disabilities who are placed in institutions for care or custody of children and youth. (NY Educ L Sec 4002) and (8NYCRR 200.4(g))

Students placed in public or private institutions are ensured access to education in a regular public school setting, when appropriate to the student's individual needs. Section 3202 of the Education Law details procedures for the educational placement and reimbursement of such students. Students with disabilities placed in child care institutions are assured participation in a regular education setting, when appropriate, through Section 4002(2) of Education Law.

The number of students with disabilities in regular education programs, special classes and in-state and out-of-state schools is provided in the Annual Data Report found in the appendices. This data is also shown by category of disability.

Technical Assistance and Training

The SED will ensure, through its Comprehensive System of Personnel Development (CSPD) section of the State Plan (see Section X of this Plan), that teachers, parents, and administrators are fully informed of their responsibilities to implement services and programs in the least restrictive environment and are provided training and technical assistance to assist them in such activities. Additionally, the "Local Education Agency Application for Federal Assistance for the Education of Children with Disabilities, 1992-93," outlines the policies and procedures governing the distribution and use of Federal funding for programs for such students (see page 4, #1 and page 6, first bullet). The CSPD section of the State Plan will also provide information on the ways training and technical assistance are provided to teachers, administrators, parents and other interested persons. Responsibilities regarding the obligation of LEA's to ensure 34 CFR 300.500 under least restrictive environment have been and will continue to be communicated through:

- Office for Special Education Services (OSES) training to Boards of Education, school administrators, CSE/CPSE members, and parents;
- Special Education Training and Resource Center (SETRC) training to teachers, parents, and administrators;
- New York State Education Department training and technical assistance to be provided throughout the State following the adoption of the policy paper on Least Restrictive Environment by the Board of Regents in the spring of 1993. A series of conferences and regional training programs have been planned for the spring and fall of 1993;
- Dissemination of information publications such as manuals, newsletters, and field memoranda;
- Technical assistance to school districts found in need of direction as a result of site visits; and
- Technical assistance requests received by OSES through phone calls, letters, and agency requests;

Monitoring Activities

The compliance of public agencies with their legal responsibilities in relation to the education of students with disabilities is monitored by OSES. Program quality issues are also identified and technical assistance is provided, as needed, both to bring agencies into compliance and to strengthen program quality. A full description of OSES monitoring functions is presented in Section IX. of this Plan. An important focus of the site visits and technical assistance activities of regional monitoring staff is the implementation of least restrictive environment requirements. Monitoring staff review public agency policies and procedures, school districts' placement statistics, and student records in order to make judgements on the implementation of least restrictive environment. According to Section 200.6(h)(5) of the Regulations, if the SED, in reviewing private school

placements made by school districts, determines the school district has engaged in a pattern or practice of placing students with disabilities in private or residential schools when appropriate placements were available at public facilities or in less restrictive settings, the SED may direct the BOE to take corrective action. Following each site visit, a written report, which includes an identification of deficiencies and requirements for corrective action, is issued. The OSES Division of Program Monitoring staff work with public and private agencies to ensure that the corrective actions are implemented. (NY Educ L Sec 4403) Staff of the Division of Program Monitoring also provide training, as needed, to assist agency staff to bring about and maintain compliance.

New York State Initiatives

- It is the intent of the New York State Education Department, Office for Special Education Services, to develop a clearly articulated policy on least restrictive environment which provides a standard upon which decisions can be based in regard to the provision of special education programs and services for students with disabilities. Such a policy would also provide educators, parents, students (the special education consumers) and other interested parties who are involved in special education with a set of principles that guide the provision of special education programs and services in this State. Moreover, such a policy establishes a framework upon which a partnership can be forged among all key "stakeholders" to design an educational delivery system in order to meet this important goal and a standard to evaluate our success in this endeavor. Further, the Department strongly believes that a clear statement on least restrictive environment can provide the basis for collaborative efforts of State, regional and local educators, parents and families, representatives of institutions of higher education and professional organizations that will be implemented over the ensuing years.

- As an additional step in meeting this goal, the New York State Education Department proposes to amend the definition of least restrictive environment in Section 200.1 of the Regulations of the Commissioner. The proposed definition is as follows:

  > Least Restrictive Environment means that *special classes, separate schooling or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular education classes with the use of supplementary aids and services cannot be achieved satisfactorily. More specifically, it means* the placement of an individual pupil with a disability must: (1) provide the special education needed by the pupil; (2) provide for education of the pupil to the maximum extent appropriate with others pupils who do not have a disability; and (3) is determined following consideration of the proximity of the placement to the pupil's place of residence.

- The New York State Education Department will propose an amendment to Section 200.4(c)(2) as follows:

  > "indicate the recommended placement, *including a description of the program and placement options considered and a rationale for rejecting those options not selected. Unless the pupil's individualized education program requires some other arrangement, the child should be educated in the school which he or she would attend if not disabled."*

In accordance with Federal regulations, each public agency shall ensure that a continuum of alternative placements is available to meet the needs of students with disabilities for special education and related services, including special classes, special schools, home instruction, instruction in hospitals and institutions and the provision of supplementary services to be provided in conjunction with the regular class placements. However, unless a student's individualized education program requires some other arrangements, the child is educated in the school which he or she would attend if not disabled.

- On December 10, 1991, public hearings were held at 11 sites throughout the State. The purpose of these hearings was to receive testimony and public comment regarding the contents of the *State Plan*. The increased number of sites to conduct the hearings was intended as an opportunity to increase public participation, which was accomplished. Three hundred and fifty people attended the hearings and 247 pieces of written testimony were received.

  The written testimony was analyzed and a report developed and presented to the Board of Regents in April 1992. The report presented the entire range of issues and comments received at the public hearings. The majority of comments pertained to the sections on Least Restrictive Environment and the Individualized Education Programs. The *State Plan* was revised to the extent possible to reflect the comments that were focused on the content of the *State Plan*. As the *State Plan* is developed according to a prescribed Federal checklist, it was necessary to maintain the required parameters. Comments that were submitted and not included in the revised *State Plan* have been incorporated into the Board of Regents report and is a public document. All of the oral and written testimony received has been analyzed by the Office for Special Education Services and will be used to assist in

developing programs and policies affecting students with disabilities.

- On December 11, 1991, focused forums on the concept of the least restrictive environment were held at 11 regional sites across the State. The forums were designed to be interactive in nature and maximize public participation. An excellent turnout occurred with approximately 527 persons attending. A series of questions, prepared in a survey format, were discussed and completed in small groups at each site. Over 100 surveys have been analyzed and will be used to assist in revising a position paper on the least restrictive environment. It is intended that the position paper will be completed during the summer of 1992 and will then be widely disseminated throughout the State to educators, parents, advocacy groups, and other State agencies. During the fall of 1992, it is expected that training will be provided on the topic of the least restrictive environment and that informational publications will also be developed.
- In addition, consistent with *A New Compact for Learning*, school districts, BOCES, Special Act School Districts, approved private schools, State-operated and State-supported schools and State departments or agencies may apply for innovative program waivers from requirements in 8 NYCRR 200.1 and 200.6. These waivers are for the purpose of enhancing student achievement and/or opportunities for placement in regular classes and programs and must otherwise be consistent with State law and Federal requirements.

VIII. PROTECTION IN EVALUATION PROCEDURES

Referral: New York State's System for Determining Special Education Eligibility

The special education process is initiated when a child who is suspected of having a disability is referred, in writing, to the chairperson of the Committee on Preschool Special Education (CPSE) for children 3 through 4 years old, or for 5 through 21-year-old students to the chairperson of the Committee on Special Education (CSE) or to the building administrator of the school the student attends or is eligible to attend. Immediately upon receiving a referral, the CSE/CPSE must notify the parents and request consent to conduct an individual evaluation to help determine eligibility for special education programs and services.

According to Section 200.4(a)(1) of the Regulations of the Commissioner of Education, a referral may be made by:

- a student's parent or person in parental relationship;
- a professional staff member of the school district in which the student resides, or the public or private school the student legally attends;
- a licensed physician;
- a judicial officer;
- the commissioner or designee of a public agency with responsibility for welfare, health or education of children;
- a student who is 18 years of age or older, for purposes of referring one's self, or an emancipated minor, who is eligible to attend the public schools of the district; or
- in addition to the above, a referral to the CPSE may also be made by a professional staff member of:
  - — an Early Childhood Direction Center (ECDC),
  - — preschool programs approved pursuant to Section 4410 of Education Law, or
  - — programs providing special instruction to children birth through 3 years of age approved by the lead State agency as designated by the Governor to administer Federal funds for such purposes. (8NYCRR 200.16(b)(1)(i))

Part 117 of the Regulations of the Commissioner requires diagnostic screening as a preliminary method of distinguishing from the general school population those students who may be gifted, who may have a disability and/or those who are limited English proficient. Such screening must be conducted for students entering the New York State public school system for the first time and for students scoring below the designated level on a grade three reading or mathematics Pupil Evaluation Program test for New York State elementary schools, or a Preliminary Regents Competency Test in reading or writing administered at grade eight or nine. Based upon the information, a referral must be made to the CSE for a student who may have a disability, as determined by the screening results, no later than 15 calendar days after completion of the screening.

Written referrals submitted by persons other than the parent, student or a judicial officer, must contain specific information and when received the CSE/CPSE chairperson or the building administrator must follow specific time lines as outlined in Section 200.4(a)(3-6), (8) and (9) and Section 200.16(b)(1)(ii) and (iv) of the Regulations. A referral shall:

- state the reasons for the referral and include any test results, records or reports upon which the referral is based;
- describe attempts to remediate the student's performance prior to referral, including any supplementary aids or support services provided for this purpose, or state the reasons why no such attempts were made; and
- describe the extent of parental contact or involvement prior to the referral.

The building administrator and/or the CSE chairperson, upon receipt of a referral or copy of a referral, may request a meeting with the parent or person in parental relationship to the student, and the student, if appropriate, to determine whether the student would benefit from alternatives to special

education, including the provision of educationally related support services, speech and language improvement services and remedial instruction. (8NYCRR 200.4(a)(7) and (9)) The meeting shall be conducted within 10 days of the building administrator's receipt of the referral and shall not impede a CSE/CPSE from continuing its duties and functions under the Regulations. If at the meeting the parent or person in parental relationship and the building administrator agree, in writing, with the provision of alternatives to special education, then the referral will be considered unwarranted and withdrawn. This agreement must contain a description of the alternative educational program and its duration, be provided to the CSE chairperson, parent, and pupil (if appropriate) and be placed in the student's cumulative education record file. An opportunity must also be provided for a follow-up conference.

Under the provisions of Section 200.5 of the Regulations, immediately upon receipt of referral, the CSE/CPSE must send a notice to the parents requesting their consent to the proposed evaluation of a student not previously identified as having a disability. If parental consent is not obtained within 30 days of the date of receipt of referral, the CSE chairperson must document attempts to obtain parental consent and will request that the Board of Education (BOE) initiate an impartial hearing to resolve the matter. (8NYCRR 200.4(a)(8)) In the event that consent for an individual evaluation is not provided for an eligible preschool child, the CPSE must implement the district's practices and procedures for the purpose of ensuring that parents have received and understand the request for consent. (8NYCRR 200.16(b)(1)(iv))

General

Upon referral of a student, the district CSE is responsible for initiating an individual evaluation as specified in Section 200.4(b) of the Regulations. Testing and evaluation materials and procedures used for the purposes of evaluation and placement of students with disabilities must be selected and administered so as not to be racially or culturally discriminatory. No single procedure is used as the sole criterion for determining an appropriate educational program for the student. In addition, the OSES has worked cooperatively with the Division of Bilingual Education and a statewide advisory panel to develop a publication entitled *Guidelines for Services to Students with Limited English Proficiency and Special Education Needs in New York State*. Section III of these Guidelines, "A Multidisciplinary Evaluation," provides procedures for selecting and administering testing and evaluation materials that are not racially or culturally discriminatory. This publication has been distributed to appropriate personnel statewide.

Evaluation Procedures

An individual evaluation provides the comprehensive information necessary to assist the CSE or the CPSE in determining whether a child is eligible for special education. It is an initial step in the development of the Individualized Education Program (IEP). The evaluation is conducted by a multidisciplinary team and incorporates information provided by the parents. It is designed to determine a student's educational, social, physical, and management needs. This data serves as a basis for the CSE/CPSE recommendations regarding the provisions of a student's special education program, services, and placement.

An individual evaluation is defined as any procedures, tests or assessments used selectively with an individual student, including a physical examination, in accordance with the provisions of Section 903, 904 and 905 of New York State Education Law, an individual psychological examination when determined to be necessary by a school psychologist, a social history and other appropriate assessments as may be necessary to determine whether a student has a disability and the extent of his/her special education needs. It does not include basic tests administered to, or procedures used with, all students in a grade, school, or class. However, that type of information should be reviewed when conducting an evaluation. (8NYCRR 200.1(s)) Unless a referral is withdrawn pursuant to Section 200.4(a)(7) and (9) of the Regulations, an individual evaluation is initiated by a CSE/CPSE upon parental consent (8NYCRR 200.5(a)(2)) and is conducted at no cost to the parent. (8NYCRR 200.4(b)) Upon parental consent the BOE must arrange for an individual evaluation of a preschool child by an approved program selected by the parent. (8NYCRR 200.16(c)) The individual evaluation is conducted by a multidisciplinary team of qualified individuals and the results are forwarded to the CSE/CPSE and to the student's parent or person in parental relationship. (NY Educ L Sec 4401-a(4)) In interpreting evaluation data and in making a placement decision, each school district must ensure that information obtained from a variety of sources is documented and carefully considered. According to Section 200.4(b)(2) of the Regulations, school districts must ensure that when tests and other assessment procedures are administered such instruments:

- are provided and administered in a student's dominant language or other mode of communication, unless it is clearly not feasible to do so;
- have been validated for the specific purpose for which they are used;
- are administered by trained personnel in accordance with the instructions provided by those who develop such tests or procedures;
- include those tailored to assess specific areas of educational need and not merely those which are designed to provide a general intelligence quotient;
- when given to a student with impaired sensory, manual or speaking skills, provide results that accurately reflect the student's aptitude or achievement level or whatever other fac-

tors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills, except where those skills are factors which the tests purports to measure;

- use no single procedure as the sole criterion for determining an appropriate educational program for a student;
- are conducted by a multidisciplinary team, including at least 1 teacher or other specialist who is certified or knowledgeable in the area of the suspected disability;
- assess the student in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, vocational skills, communicative status, and motor abilities;
- include for students age 12 and those referred to special education for the first time who are 12 and over, an assessment that reviews school records and teacher assessments, and parent and student interviews to determine vocational skills, aptitudes, and interests.
- include an observation of the student in the current educational setting; and
- provide results to the parents or persons in parental relationship in their dominant language.

If the parents disagree with the evaluation obtained by the school district, they have the right to obtain an independent evaluation at public expense. An independent evaluation is an individual evaluation of a student thought to have a disability which is conducted by a person who is not employed by the public agency responsible for the education of the student. (8NYCRR 200.1(r)) Upon request, the parent must be provided the names, addresses, and telephone numbers of appropriate public and private agencies and other professional resources where they can obtain an independent evaluation. However, the school district may initiate an impartial hearing to show that its evaluation is appropriate. If the hearing officer determines that the district's evaluation is appropriate, the parent still has the right to obtain an independent evaluation, but not at public expense. (8NYCRR 200.5(a)(1)(vi)(a))

Placement Procedures

Pursuant to Section 4402(1)(b)(1) of New York State Education Law, the BOE or trustees of each school district shall establish Committees on Special Education, as necessary to ensure timely evaluation and placement of pupils. Each CSE must be composed of, at least, the student's teacher as defined by applicable Federal regulations, a school psychologist, a representative of the school district qualified to provide, administer, or supervise special education, a school physician, as requested in writing, a parent of a student with a disability residing in the school district, provided such parent is not employed by or under contract with the school district, and such other persons as the BOE or the board of trustees designates. Each CSE is then responsible for inviting to any meeting, concerning the educational program of a student with a disability, the appropriate professionals most familiar with the student's disability or disabilities. In addition, when transition services will be discussed, the CSE must invite the student and a representative of any agency likely to be responsible for providing or paying for transition services to assist with the development of the IEP. (8NYCRR 200.4(c)(4))

The CPSE is composed of an appropriate professional employed by the school district; a parent of a student with a disability who resides in the school district and is enrolled in a preschool or elementary level educational program, provided that such parent shall not be employed by or under contract with the school district or municipality; a professional who participated in the evaluation of the student; and an appropriately licensed or certified professional designated by the agency that is charged with the responsibility for the preschool student pursuant to Title I of Public Law 99-457, if any. In addition, the chief executive officer of the municipality of the preschool child's residence may appoint an appropriately certified or licensed professional to the committee. The professional employed by the school district shall serve as chairperson to the committee. (NY Educ L Sec 4410(3)(a))

The CSE/CPSE is required to review and evaluate all relevant information, including but not limited to, that presented by the parent and teacher pertinent to each student suspected of or identified as having a disability. This information includes results of the physical examination in accordance with Sections 903, 904 and 905 of New York State Education Law and, when determined to be necessary by a school psychologist, an appropriate psychological evaluation performed by a qualified private or school psychologist. In addition, other appropriate assessments as necessary to ascertain the physical, mental, emotional, and cultural-educational factors which may contribute to the suspected or identified disability and all other school data which relates to the student's progress, including where appropriate, observation of classroom performance should be part of the evaluation. (NY Educ L Sec 4402(1)(b)(3))

According to Section 200.6(a)(1) and (2) of the Regulations, to the maximum extent appropriate to meet their individual needs, students with disabilities must be provided special education in the least restrictive environment as defined in Section 200.1 (v) of the Regulations. The CSE/CPSE will make a recommendation based on its review of the evaluation information at meetings with the parent of the student, the student's teacher and others involved in the education of the student. Parents are guaranteed the right to participate in the development of this recommendation.

For a student not previously identified as having a disability, the CSE must provide a recommendation to the BOE within 30 days of the date of receipt of consent, or within 40 days of the

date of receipt of referral, whichever period ends earlier. For a three- or four-year-old child, the CPSE must provide its recommendations within 30 days of the date of receipt of consent to evaluate. For a student with a disability referred for review, a recommendation shall be provided within 30 days. (8NYCRR 200.4(c)) Prior to development of a recommendation, the CSE shall ensure that the appropriateness of the resources of the regular education program, including educationally related support services, speech and language improvement services and remedial instruction, have been considered.

If a CSE/CPSE determines that a student is not eligible for special education, the recommendation must state the reasons for this determination. (8NYCRR 200.16(d)(2) and 200.4(c)(1)) For school-aged students, a copy of the recommendation and appropriate evaluation information must be provided to the building administrator who shall determine which educationally related support services, if appropriate, will be provided to the student, and, to the extent available, will ensure that such services are provided pursuant to Section 100.2(v) of the Regulations. (8NYCRR 200.4(c)(1)(i))

If a school-age student is determined to be eligible for special education, the recommendation must include the information described in the section of this plan entitled "Individualized Education Programs."

Within 30 days of the receipt of the recommendations of the CSE/CPSE, the BOE must arrange for appropriate special programs and services for the student. For students initially entering special education, parental consent is needed prior to providing the special education programs and services. For a student initially recommended for a 12-month educational program, parental consent is also required.

If the student's parent, teacher or an administrator of the school or agency serving the student believes that the program or placement recommended in the IEP is no longer appropriate, they may refer the student to the CSE/CPSE for review, provided that the student shall remain in the current placement pending a new recommendation of the CSE/CPSE, unless the parent and BOE otherwise agree. (8NYCRR 200.4(d))

According to Section 200.4(d)(3), if a participating agency does not provide the agreed upon transition services, as stated in the IEP, the school district must initiate another meeting of the CSE "as soon as possible." The goals, objectives, and activities should be reviewed at that time and revised if appropriate. If the goals and objectives remain appropriate, then alternative activities must be arranged to foster these desired outcomes.

If it is determined by the CSE that a student who has been receiving special education services no longer needs such services, then the recommendation will:

- identify the declassification support services, if any, to be provided to the student and/or the student's teachers; and
- indicate the projected date of initiation, frequency of provision and duration of the services (such services may not continue for more than one year after the student enters full-time regular education). (8NYCRR 200.4(c)(i) and (iii))

Annual Review and Triennial Evaluation

The IEP of each student with a disability must be reviewed at least annually by the CSE or CPSE. The scheduled annual review, or more frequent reviews or reevaluations conducted at the request of the parent, teacher, or administrator for the purposes of recommending continuation, change, or termination of a student's program, require notification to the parent(s) of the opportunity to participate in the review meeting. The CSE/CPSE shall:

- conduct an annual review pursuant to Section 4402(1)(b)(2) of Education Law which shall be based upon review of a student's IEP and other current information pertaining to the student's performance;
- prior to the annual review, notify the parent of its intent to review the student's program and placement in accordance with Section 200.5(a) of the Regulations; (8NYCRR 200.4(f)(2)) and
- upon completion of the annual review, notify the parents of the CSE/CPSE recommendation in accordance with Section 200.5(a)(4) of the Regulations. (8NYCRR 200.4(f))

The CSE must arrange for an appropriate reexamination of each student with a disability at least every three years by a physician, a school psychologist, only where determined necessary, and, to the extent required by the CSE, by other qualified appropriate professionals. The triennial evaluation should be sufficient to determine each student's individual needs and continuing eligibility for special education. (8NYCRR 200.4(f))

IX. RESPONSIBILITY OF STATE EDUCATIONAL AGENCY

Responsibility of the New York State Education Department for All Educational Programs for Students with Disabilities

The New York State Education Department is responsible pursuant to State statute to ensure that the requirements of the Individuals with Disabilities Education Act (IDEA) are carried out, and that each educational program for students with disabilities administered within the State, including programs administered by public agencies, meets the educational standards of the State Education Department. Shared responsibility with other agencies is described in Part 2—Section I, the "Right to Education Policy Statement." The SED's responsibilities for all educational programs as mandated by 34 CFR 300.600 may not be construed to limit the responsibility of agencies other than the SED for providing or paying some or all of the costs of a free appropriate public education to students with disabilities in the State. (NY Educ L Sec 112 and NY Educ L Sec 4404)

Statutes

Article 89 of New York State Education Law includes provisions that establish the authority of the New York State Education Department. Specifically, Sections 4403, 4404 and 4410 of this Article describe the extent of the Department's authority and its duties as follows:

NY Educ Law Section 4403

- to maintain a statistical summary of the number of students with disabilities 3-21 years of age who reside within the State and the nature of their disabilities and to use all means and measures necessary to adequately meet the physical and educational needs of such students, as provided by law;
- to stimulate all private and public efforts designed to relieve, care for, or educate students with disabilities 3-21 years of age and to coordinate such efforts with the work and function of governmental agencies;
- to formulate rules and regulations pertaining to the physical and educational needs of students with disabilities 3-21 years of age as the Commissioner of Education deems to be in their best interests;
- to periodically inspect, report on the adequacy of, and make recommendations concerning instructional programs for all students with disabilities 3-21 years of age who reside in or attend any State-operated or State-financed social service, youth, health, mental health or State correctional facilities;
- to require such financial information as may be necessary from and to audit any public or nonpublic school receiving any public monies pursuant to any provision of Education Law as the Commissioner deems appropriate;
- to provide for an advisory panel, appointed by the Commissioner, composed of individuals involved in or concerned with the education of students with disabilities, including at least five parents or guardians of students with disabilities, at least five State and local education officials, and at least five representatives of State or regional associations concerned with the education of children with disabilities to advise the Governor, Legislature, and Commissioner of unmet needs within the State in the education of students with disabilities, and to comment publicly on any rules or regulations proposed for issuance by the Commissioner regarding the education of students with disabilities and the procedures for distribution of funds under Article 89. Such panel members serve without compensation except that they are entitled to reimbursement for actual and necessary expenses incurred in their service;
- to define specific criteria for determining whether a particular disorder or condition may be considered a specific learning disability and to describe diagnostic procedures which can be used in determining whether a particular child has such a disorder or condition, and to recommend, in consultation with the Division of the Budget, a cost effective program proposal and financial recommendations;
- to develop and distribute a handbook for parents of students

with disabilities aged 3-21 and the members of Committees and subcommittees on Special Education, explaining, in layman's terms, the financial and educational obligations of the State, the county or city, the home school district, the Committee on Special Education, and the parent or legal guardian of a student with a disability, the special services or programs available pursuant to Article 89, and the legal procedures available to an aggrieved parent or legal guardian of a student with a disability;

- to make provision, by regulation of the Commissioner, for assurance of confidentiality of any personally identifiable data, information, and records collected or maintained by the State Education Department or any school district, including a Committee or subcommittee on Special Education or Committee on Preschool Special Education, and the officers, employees or members thereof, and shall establish procedures upon which any such personally identifiable data, information or records may be disclosed;
- to determine whether a student, whose report is submitted to the Department pursuant to Section 4402 of this article or subdivision 13 of Section 398 of the social services law, will likely need adult services and, if such need will likely exist, develop a recommendation of all appropriate adult programs operated or approved by the Department which may be available when the student attains the age of 21. If necessary and appropriate, the Commissioner may conduct an evaluation of the student to determine if adult services will be needed. Such recommendation of all programs shall be made available to the parent or guardian of such student as soon as practicable, but no later than 6 months before such student attains the age of 21;
- to promulgate regulations concerning standards for the protection of students with disabilities 3-21 years of age in residential care from abuse and maltreatment;
- to cooperate with the State Department of Social Services and other departments, divisions and agencies of the State when a report is received pursuant to Title Six of Article Six of the Social Services Law, to protect the health and safety of students with disabilities 3-21 years of age in residential placement. Such cooperation shall include: the making of reports of alleged child abuse or maltreatment; providing necessary assistance to the State Department of Social Services in the Department's investigation thereof, and considering the recommendations of the State Department of Social Services for prevention and remedial action, including legal action;
- to provide for the development and implementation of the corrective action plan with respect to an indicated report of child abuse or maltreatment;
- to provide technical assistance to school districts for appropriate evaluation and assessment of students 3-21 years of age; and
- to provide technical assistance to school districts to assist in the adaptation of curriculum for the instruction of students with disabilities 3-21 years of age;

NY Educ Law Section 4404—

- sets up due process procedures through which parents can appeal decisions regarding special education:
  - — first, through an Impartial Hearing Officer appointed by the Board of Education, and
  - — second, through review by the State Review Officer;
- establishes procedures to determine aid to school districts based on expenses for education of students with disabilities;
- authorizes placement of students with disabilities, if necessary, in out-of-state schools; and
- establishes a mediation demonstration project.

NY Educ Law Section 4410—

This section of Article 89 authorizes the Department of Education to ensure the provision, review, and monitoring of special education programs and services for eligible 3- and 4-year-old students with disabilities.

In addition to Article 89, other provisions in the State Law and Regulations establish the State Education Department's responsibilities for all educational programs in the State. (NY Educ L Secs 101, 112, 207, 3202(5)(b) and 4403) and (8NYCRR 116 and 200)

Article 81 of Education Law (NY Educ L Secs 4001-4006) establishes procedures for providing educational services to children with disabilities residing in child care institutions. Key components of this Article are as follows:

NY Educ Law Sections 4001-4006—

- establishment of committees on special education in child care institutions;
- establishment of procedures for payment of tuition and maintenance for children with disabilities residing in child care institutions through the development of interagency agreements;
- provision of authority to the Commissioner to establish and enforce standards of instruction, personnel qualifications, and other requirements for educational services or programs; and
- provision of authority to Family Court, Probation and Social Services to seek evaluative information from a local school district when placement in a child care institution is being considered for a child who is suspected of having a disability.

Article 81 was further amended to add a new category of care

entitled "residential treatment facility for children and youth" (RTF). This category of care allows for the placement of a child under the care of the Office of Mental Health in an RTF based upon the approval of a preadmission certification committee, whether or not the placement is being made by a public agency. The preadmission certification committee, when considering placement in an RTF, must seek evaluative information from the child's local school district of residence.

NY Educ Law Section 101—

This section of Education Law empowers the Department with the general management and supervision of all public schools and all of the educational work of the State.

NY Educ Law Section 112—

This section of Education Law authorizes the Department to establish and enforce standards of instruction, personnel qualifications and other requirements for educational services or programs with respect to the individual requirements of students who are in full-time residential care in facilities or homes operated or supervised by other State departments or agencies or political subdivisions.

NY Educ Law Section 207—

This section of Education Law authorizes the New York State Board of Regents to exercise legislative functions concerning the educational system of the State, determine its educational policies, and establish rules for carrying into effect the laws and policies of the State relating to education.

NY Educ Law Section 3202(5)—

This section of Education Law allows students who reside in schools for the mentally retarded operated by the Department of Mental Retardation and Developmental Disabilities (OMRDD) to receive an education in the public school of the school district in which the facility is located.

Regulations

Part 116 of the Regulations of the Commissioner of Education—

Part 116 of the Regulations of the Commissioner was added in 1978 and amended in 1984 to provide for consistency in education programs and services for students, including special education programs for students with disabilities, in full-time residential care in homes or facilities operated or supervised by a State department or agency or political subdivision.

Part 200 of the Regulations of the Commissioner of Education—

This section of the Regulations of the Commissioner of Education provides for the physical and educational needs of students with disabilities who are ages 3 through 21. The following is a topical outline of the sections of the Part 200 Regulations:

- Section 200.1 defines terms related to special education;
- Section 200.2 describes the responsibilities of Boards of Education (BOE) in making education available to students with disabilities according to State law. Included are responsibilities to maintain a current register of all students with disabilities residing in the district; to adopt a written policy and district plan for the education of such students and to arrange for an appropriate special education program for each student with a disability as recommended by the CPSE/CSE;
- Section 200.3 describes the responsibility of each BOE to appoint Committees and Subcommittees on Special Education to carry out the procedures defined in Education Law regarding the referral, evaluation, modification, individualized education program (IEP) development, placement, and review of students with disabilities;
- Section 200.4 describes the specific procedures for referral, evaluation, IEP development, placement, and review which CSEs and subcommittees must follow;
- Section 200.5 describes the procedural due process which must be offered to each student who has, or is suspected of having, a disability and his or her parents. Included are procedures for notice of initial evaluation, review or reevaluation, notice of CSE/CPSE meetings, notice of recommendation, and notice of placement. Procedures are also described for consent to evaluations and placement; impartial hearings; appeals; appointment of surrogate parents; and maintaining confidentiality of personally identifiable information;
- Section 200.6 describes the continuum of services provided to students with disabilities. Requirements are established for providing an appropriate education in the least restrictive environment; for grouping by similarity of individual needs; and for staffing educational programs and related services. Specific standards are established for providing transitional services, consultant teacher services, related services, resource rooms, special classes, home instruction, placement in in-state or out-of-state private schools, and for providing 12-month programming for certain students with disabilities. The continuum of services at the State-operated schools is described later in this same section under "Division of State-Operated Schools".
- Section 200.7 establishes program standards for education programs for students with disabilities who are being educated in private schools and State-operated or State-supported schools. Included are procedures for approval of such schools; their operation and administration; and the appointment of students who are blind, deaf, and severely physically disabled to certain State-operated and State-supported schools;

- Section 200.8 describes procedures for State assistance for instruction of students with disabilities pursuant to Section 4406 of Education Law, including approvals of orders of the Family Court;
- Section 200.9 describes procedures for State reimbursement to private schools and special act school districts for education of students with disabilities who have been placed in such schools;
- Section 200.10 describes procedures for reimbursement to certain State-operated and State-supported schools for students who are blind, deaf, and severely disabled;
- Section 200.11 describes admission to public schools of students residing in hospitals of the State Office of Mental Health and Office of Mental Retardation and Developmental Disabilities or in child care institutions. This regulation assures that those students who can benefit from such instruction are admitted to the schools of the district in which the facility is located;
- Section 200.12 describes State assistance for the transportation of students with disabilities to and from residential schools;
- Section 200.13 describes education programs for students who are autistic. Guidelines are provided for chronological age range, class size, instructional services, and inclusion of autistic students in resource rooms or regular classes;
- Section 200.14 describes educational services in Day Treatment Programs certified by the Office of Mental Health for students who are mentally ill and require both mental health services and special education services. Procedures for both types of services are described;
- Section 200.15 describes procedures for child abuse prevention for students who are enrolled in approved private residential schools, State-operated or State-supported schools which have residential components and special act school districts. Included are procedures for screening applicants for employment and volunteer work; establishment of personnel standards; procedures for protection of resident students from abuse and neglect; staff training and orientation to issues involving abuse and neglect; and instruction of students which will enable them to protect themselves from abuse;
- Section 200.16 describes preschool programs for students with disabilities including eligibility and procedures for referral, evaluation, IEP development, placement, and review;
- Section 200.17 describes reimbursement of public school district administrative costs and due process costs for education programs or educational services approved under Section 4410 of Education Law;
- Section 200.18 describes fiscal audits of approved preschool programs and services approved under Section 4410 of Education Law;
- Section 200.19 describes reimbursement to preschool programs approved under Section 4410 of Education Law; and
- Section 200.20 describes approval, operation, and administration of preschool programs funded pursuant to Section 4410 of Education Law.

Part 100 of the Regulations of the Commissioner of Education—

Part 100 of the Regulations of the Commissioner of Education, as revised in 1984, implemented the provisions of the Regents Action Plan. Several areas of these regulations address the needs of students with disabilities and ensure appropriate access to regular education curricular and extracurricular programs;

Section 100.1 defines terms related to regular education;

- Section 100.2(d) requires instruction in a second language for students in grades K-9. It also requires the completion of a sequence of courses in a second language in order to receive a Regents high school diploma. All students with disabilities must be assured access to second language programs. Students with disabilities for whom this requirement may not be appropriate to their individual needs may be exempted from study in a second language through a recommendation by the CSE to the BOE;
- Section 100.2(e) requires that schools must offer all students the opportunity to meet the requirements for receiving a Regents high school diploma. Students with disabilities need to have well-planned courses of study developed as early as possible to assure equal access to diploma opportunities;
- Section 100.2(g) allows students with disabilities to use alternative testing techniques, as appropriate, on all State-mandated tests. This allows such students the opportunity to demonstrate skills and competencies without being limited by their disabilities. The CSE has the responsibility to recommend the inclusion of these alternative methods of test taking to the parent and BOE in the development of the IEP;
- Section 100.2(j) states that each school district must provide guidance programs to all students, including students in special education, on an annual basis regarding postsecondary career plans, attendance problems, and/or academic and behavioral or adjustment problems;
- Section 100.2(k) requires that schools must ensure nondiscriminatory practices in curricular and extracurricular activities. Students with disabilities cannot be denied access to programs due to their disability;
- Section 100.2(l) requires that school districts develop and implement a written policy on school conduct and discipline. Such policies must include procedures for determining when the conduct of a student with a disability necessitates

referral to the CSE for consideration of the need to modify the student's IEP;

- Section 100.2(s) states that students with disabilities must be ensured access to the full range of programs and services appropriate to their needs. Also, in order to help assure full access, school districts must modify instructional techniques and materials. It is anticipated that a majority of students with disabilities are able to accomplish the goals and objectives of the regular education curriculum, if appropriate support is provided;
- Section 100.6 allows for the awarding of local certificates to students with disabilities who are unable to meet the requirements for a diploma, provided that the student has met the goals developed in the IEP and has attended school for 13 years beyond the kindergarten level and that the district has adopted written policies and procedures ensuring that students with disabilities are provided appropriate opportunities to earn a high school diploma. Each local certificate must be accompanied by a written statement of assurance that the student who receives it continues to be eligible to attend school until he or she receives a high school diploma or until the end of the school year of his or her 21st birthday;
- Section 100.7 establishes requirements for high school equivalency diploma programs. Students with disabilities are to be ensured access to examinations and programs designed to provide this alternative credential;
- Section 100.9 makes available a high school IEP diploma to those students who, due to their disabilities, cannot achieve a local or Regents high school diploma. This high school IEP diploma provides local districts the opportunity to appropriately recognize the accomplishments of these students; and
- Section 100.10 establishes procedures to assist school authorities in fulfilling their responsibility under Education Law Sections 3204(2) and 3210(2)(d) and in meeting their responsibility of determining the competency of the instructor and substantial equivalence of instruction provided at home to students of compulsory school age.

Part 117 of the Regulations of the Commissioner of Education—

Part 117 establishes standards for screening new entrants mandated through Chapter 53 of the Laws of 1980. Every new entrant to New York State schools must be screened to determine which students are possibly gifted or perhaps have a disability. Through the provisions of this part, students who may have a disability must be referred to the CSE no later than 15 calendar days after completion of the diagnostic screening.

Office for Special Education Services

To achieve the State's goals for the education of students with disabilities, the New York State Education Department established the Office for Special Education Services (OSES). The Office, under the direction of an Assistant Commissioner, operates with four divisions: Program Development, Program Monitoring, Special Education Fiscal Management, and State-operated Schools. Each division has major functions related to the continuing goals for educating students with disabilities in New York State.

Office of Assistant Commissioner for Special Education Services

The Office of the Assistant Commissioner maintains a leadership role in the area of special education to school districts and agencies that provide special education programs and services to students with disabilities. The Office provides the New York State Education Department with direction in developing regulations and policies related to the education of students with disabilities in response to Federal law and regulations as well as actions by the New York State Legislature. The Office is specifically responsible for the direct coordination of Federal aid to districts under P.L. 89-313, as well as P.L. 94-142 and its subsequent amendments.

The Office has the overall responsibility for the special education programs and services provided to students with disabilities, who are ages 3 through 21 in public and nonpublic schools. It also has the responsibility to serve as liaison to the State Legislature and other State agencies that are involved with the education of students with disabilities.

Division of Program Development

The Division of Program Development (DPD) is responsible for the development of legislation, regulations, and guidelines affecting special education programs and services to students with disabilities being educated in public, nonpublic, and agency programs throughout the State.

The DPD provides training, information, and technical assistance to local school districts, BOCES, private schools, State agencies and parents. The Division also administers Federal-and State-funded programs designed to enhance the delivery of special education programs to students with disabilities. These support services are provided directly by the Division's staff and indirectly through the coordination of the Office's Comprehensive System of Personnel Development (CSPD) which includes training and information dissemination through the Special Education Training and Resource Centers (SETRC) and Specialty Centers. The DPD manages the State's CSPD that provides an extensive range of technical assistance and training to educators, parents, and other interested persons on issues pertinent to the education of students with disabilities.

The DPD is also responsible for coordinating activities for

students with disabilities, ages 3-5 years. This includes review of programs funded through the Family Court for students with disabilities birth to three. The DPD is also involved in developing legislative proposals and reports relating to early childhood special education and in interagency activities, especially with the Department of Health, as the State continues in the efforts to implement Title I of P.L. 99-457.

Division of Program Monitoring

The Division of Program Monitoring monitors school programs for compliance with Federal and State laws and regulations regarding the education of students with disabilities. The Division monitors programs operated by school districts, Boards of Cooperative Education Services (BOCES), private day and residential schools, State-supported and State-operated schools for the deaf, blind, and severely physically disabled, and the educational programs operated by other State agencies for students in their care.

Monitoring includes on-site evaluations of programs, review of Federal grant proposals, review of applications from school districts for funding for students with disabilities (STAC-1 Forms) in private schools, and review of program applications from BOCES and their component districts. Following the review, a comprehensive report is developed which indicates strengths and compliance issues and time lines for correcting problems identified. Districts must present evidence that identified compliance issues are corrected or that satisfactory progress toward correction is being made within imposed time lines. If a school district or agency fails to make satisfactory progress in correcting deficiencies, Federal and State funds can be withheld from the district. Copies of site-visit reports, which are public documents, may be reviewed at the school district named in the site-visit report and copies may be obtained by contacting Freedom of Information Requests Office, New York State Education Department, Albany, NY 12234.

The Division provides technical assistance to school programs throughout the State to improve the effectiveness of the education provided to students with disabilities. This technical assistance may take a variety of forms, including recommendations within the context of monitoring reports, meetings with administrators to discuss and clarify issues of concern, and actual on-site work with administrators and staff to improve the quality of instructional services within the programs.

Division of Special Education Fiscal Management

Fiscal responsibilities of the Division include budget reviews for all Section 4201 schools, establishment of reimbursement rates for in-state and out-of-state private schools for students with disabilities, and administration of federally funded programs under P.L. 89-313 and the Individuals with Disabilities Education Act, Part B.

The Federal Program Aid Unit of this Division directly administers or coordinates the administration of the State's P.L. 94-142, P.L. 99-457, P.L. 89-313 and P.L. 101-476 Federal grant programs. This entails annually planning and implementing the State's census of students with disabilities eligible to generate Federal funds under these grant programs; preparing the State's applications for annual grant awards; soliciting, receiving, reviewing, and approving subgrant applications; and preparing annual performance and data reports as required by the Federal government.

The Program Services Unit is responsible for the administrative processing of Commissioner's approvals for various payment and placement authorization programs for OSES. This includes programs such as court order, deaf infant, appointments to State-operated and State-supported schools, district contracts with private schools, State contracts with out-of-state private schools, students placed in intermediate care facilities or family care homes, and high cost public placements. The Unit also processes approvals for the program for incarcerated youth and students residing in residential treatment facilities and child care institutions through the Department of Social Services and the Office of Mental Health.

Division of State-Operated Schools

The continuum of services described in Section 200.6 of the Regulations is available to all students with disabilities in New York State, including the provision of services to students with severe and multiple disabilities at the two State-operated schools. Students eligible to attend the State-operated schools may be referred directly by their parents or guardians to the Commissioner of Education. The Commissioner makes formal appointment of the student to the school following a multidisciplinary evaluation and the development of an IEP by the schools' multidisciplinary teams. Parents and the local school district CSEs and CPSEs remain involved, through the IEP process, in the student's program.

The New York State School for the Blind is located in Batavia, New York. This school serves students who are legally blind, who may also be multiply handicapped, ages 5 through 21. A full range of educational services is available, including occupational therapy, physical therapy, speech therapy, and psychological services. Both five-day and Intermediate Care Facility (ICF) levels of residential service are available to students appointed to the school.

The New York State School for the Deaf is located in Rome, New York. This school educates students, ages 3 through 21 years, who are profoundly deaf, having a hearing loss in excess of 80 dB ISO in the better ear, or those whose measurable hearing loss is less than 80 db but for whom this program is appropriate due to the profound functional limitations of their hearing

impairments. There is a range of services provided, including speech therapy and psychological services.

The continuum of services described in Section 200.6 of the Regulations is available to all students with disabilities in New York State. The provision of services to students with severe disabilities at the two State-operated schools exists at one end of the continuum of services. If a student needs a less restrictive environment than offered at one of these facilities, such student would be referred to the CSE/CPSE of the home school district who would then modify the student's IEP, if appropriate, and the student would be provided the appropriate programs and services accordingly. If, however, it is necessary to prepare such a student to return to a less restrictive environment, a State-operated school could develop a transitional program in which the student would participate, as appropriate, in programs located outside the State-operated school. Such transitional programming would be developed by the multidisciplinary team of the State-operated school with the student's parents and would be for a defined period of time for the purpose of preparing the student to return to a less restrictive educational setting.

X. THE STATE COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

CSPD 20 U.S.C. Section 1401 (a)(20)

The New York State Education Department's (SED) Comprehensive System of Personnel Development (CSPD) is designed to conform with changing Federal laws and regulations and to attain consistency with other SED initiatives. Under this CSPD, specialized training programs at the preservice and in-service levels will be coordinated by the SED. The SED will significantly reduce its role in direct training and transfer responsibilities to Special Education Training and Resource Centers (SETRC) and, as they are developed, to Specialty Centers. The SETRCs and Specialty Centers will address the development and delivery of training programs identified through local needs assessment activities directly connected to the local education agency (LEA) application process for Federal funds. This effort will ensure that the goals and objectives of all projects and statewide training programs are consistent with Office for Special Education Services (OSES) goals and objectives. SETRC Training Specialists will make information about these programs available to school districts and special education providers throughout the State. The CSPD will further ensure that programs are offered for a long enough duration to become institutionalized within districts and ensure that technical assistance can be provided on an ongoing basis.

Major Provisions of CSPD Proposal

The CSPD model will have these major components:

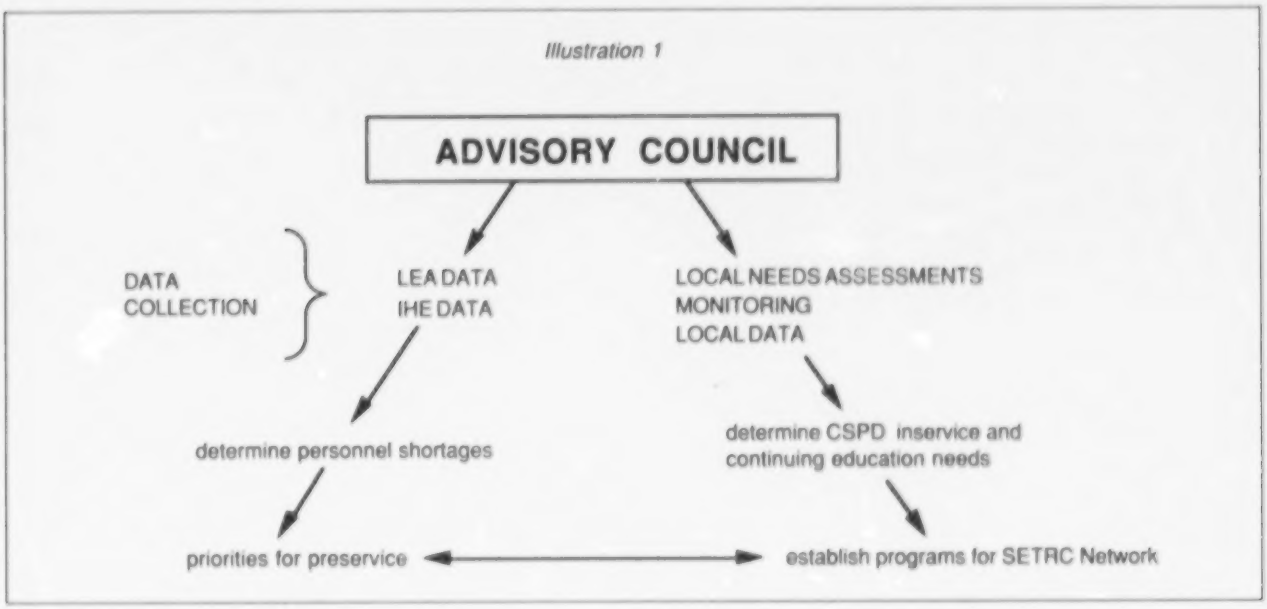
- establishment of a CSPD Advisory Council with one permanent subcommittee for preservice training and another for in-service and continuing education issues;
- reestablishment of the roles of the SETRC network and establishment of Specialty Centers to provide regionalized training, information dissemination, and technical assistance on areas identified through a needs assessment process;
- establishment of a LEA application process that requires specific goals and objectives and the utilization of the State's CSPD as a condition of approval; and
- creation of a statewide comprehensive data management and personnel development system through the expansion/modification of current data systems.

The New York CSPD includes procedures and activities for developing, updating, and implementing a plan that will address current and projected special education and related service personnel needs through a comprehensive data management and personnel development system. The revised system will allow OSES to analyze the preservice, in-service, and continuing education needs of special educators, related service personnel, and administrators in school districts. This data will be used by the CSPD Advisory Council to annually recommend specific training programs that the SETRCs and Specialty Centers will provide to meet ongoing preservice, in-service, and continuing education needs of special education personnel as designated in the CSPD submitted by each LEA. Specific details of the CSPD procedures and activities to address these needs are outlined in the CSPD model outline that follows.

Components of the new CSPD model include:

- SED—The SED will ensure that the statewide activities are coordinated with the entire SETRC system and Specialty Centers, as they are developed, through a statewide schedule/calendar of training. The SED will be responsible for the development and maintenance of the Data Management and Personnel Development System;
- Advisory Council—the Advisory Council will be established with representatives from preservice, in-service, and continuing education constituencies and include individuals from minority and disadvantaged backgrounds, as well as persons with disabilities. The council will be responsible for recommending strategies to the SED for evaluating the annual data collection and local district/provider needs assessment information which are part of the CSPD. The Council will meet

Illustration 1



on a regularly scheduled basis and be chaired by the Supervisor of the OSES Personnel Development Unit. Council representatives will include the OSES Divisions of Program Development and Program Monitoring; the SED Office of Higher and Continuing Education; the Commissioner's Advisory Panel on Special Education; undergraduate and graduate higher education institutions; a Special Education Training and Resource Center (SETRC); LEA and Boards of Cooperative Education Services (BOCES); parents of children with disabilities and other appropriate agencies and organizations. Two permanent subcommittees will be established to address issues relating to preservice and to in-service and continuing education. (See Illustration 1)

The CSPD Advisory Council subcommittee on preservice will analyze LEA and Institutes of Higher Education (IHE) data to determine priorities for preservice program initiatives. It will also analyze the outcomes of LEA needs assessment data for the purpose of developing recommendations to IHEs for course content, curriculum and skill development. Information on the current number of students in special education as well as the number of professionals in special education, related services and administration who have temporary, provisional or permanent certification/licensure is available to the subcommittee through the SED Basic Education Data System (BEDS). (See Chart 1 for information currently collected.) In addition, the number of individuals graduating from the preservice programs in these areas and applying for certification in these fields is available from the Department's Higher Education Data System (HEDS). (See Chart 2.) These two systems will be expanded/revised to become the OSES Data Management and Personnel Development System for use by the Advisory Council to analyze the information, including current and future trends in special education and related services, and will provide SED the information for IHE preservice and development needs. All recruitment plans will address the recruitment of minority students and students with disabilities.

The in-service and continuing education subcommittee of the CSPD Advisory Council will analyze LEA needs assessment data for the purpose of developing recommendations related to in-service and continuing education priorities. The subcommittee's recommendations will be used to determine the need to establish Specialty Centers and the goals/activities for the SETRC network. In-service and continuing education programs will address issues that arise as the result of law and regulation changes as well as educational research, promising practices, materials, and technology that have proven effective.

- Special Education Training and Resource Centers (SETRCs)—The SETRCs which are located regionally at each of the BOCES and in each of the major cities throughout the State will be responsible for carrying out an active role in the training programs described in the CSPD. The SETRCs will continue to remain one of the primary components of the new CSPD to address specific goals and objectives for training and providing technical assistance to school district personnel, parents, and agencies/organizations. Currently there are 51 SETRCs with approximately 100 training specialists who also employ numerous consultants to provide training and technical assistance on a variety of topics. Each individual SETRC program is locally operated within parameters established and monitored by OSES and is generally restricted to operations within its own catchment area. SETRC goals and objectives include:

— to provide regular education, occupational education, support and special education personnel with the knowledge and skills to work effectively with students with disabilities, to assist students with mild disabilities in gaining access to the regular education curricula and to assist students with severe disabilities to access education programs in the least restrictive environment (LRE). Training will focus on the modifications of instructional techniques, materials and utilization of adaptive equipment to assist students with disabilities;
— to provide training on the Part 200 Management System for Special Education. Emphasis will be on the special education applications of the Management System within the local school districts and BOCES;
— to provide training based upon identified local needs to individuals involved in the education of students with disabilities. Topics may include limited English proficiency (LEP), students in other residences, preschool issues, BOE responsibilities, disabilities awareness, assessment and integration of traumatic brain injured (TBI) students, sign language, child abuse and protection, discipline, working with autistic students, and other topics relating to the education of students with disabilities identified locally. In the 1990-91 school year, approximately 7,896 hours of training were provided to 80,000 participants on these local needs issues;
— to provide parents of students with disabilities at the preschool, elementary, middle, and secondary levels with the knowledge and skills to deal effectively with the planning and implementation of the Individualized Education Program (IEP). Topics included should address issues of transition to school programs, access to curriculum, secondary planning, and transitioning to post-high school options; and
— to provide local constituents with appropriate information regarding the education of students with disabilities. This information is provided through material dissemination, telephone and personal contact and/or media presentations. Cooperative agreements will be established with other statewide networks, such as Early Childhood Direction Centers, Teacher Centers, Bilingual Education Technical Assistance Centers, Regional Computer Centers/Regional Information Centers, and the Special Education Administrators Leadership Training Academy; and

- Specialty Centers—CSPD Specialty Centers affiliated with SETRC will be established to provide statewide coordination of activities for a specific training topic or activity. Recommendations from the CSPD Advisory Council will establish long-term priorities for the Specialty Centers. Each Center will conduct a needs assessment to assist district personnel in determining their level of need. Each Center will be responsible for the design, development and delivery of statewide training programs, information dissemination, and technical assistance related to its specific function or charge. Several Specialty Centers will be established and/or continued based on statewide need during the next four years to address both Federal and State initiatives such as:

  — a preservice center at a college/university to address preservice program recruitment activities and curriculum development to train new teachers as well as those provisionally or temporarily certified. University Leadership Institutes which have been held annually for preservice vocational rehabilitation and special education faculty to address changes in preservice programs will become a responsibility of this Center;
  — Special Education Administrators Leadership Training Academies (SEALTA) that will provide in-service training for leadership personnel involved with special education;
  — a Part 200 Management System Implementation Center that will provide support training on the Part 200 Management System for special education to SETRCs and regional information centers;
  — a parent education center that will provide training to parents on their role and responsibilities as well as training for parent members of the CSE/CPSE;
  — a CSE/CPSE center that will provide training and technical assistance to new CSE/CPSE members and update training for veteran members, as well as training and certification for chairpersons of these committees;
  — a center to provide programs and in-service training for teachers and other staff working with limited English proficient/culturally diverse populations, including bilingual evaluation techniques and assessment instruments;
  — a preschool center to address issues regarding the identification, assessment, and provision of programs and services for preschool children with disabilities;
  — a center that will provide training and technical assistance on the selection and use of effective instructional techniques; and
  — a center that will address the needs of low incidence populations; and

- CSPD Data Management and Personnel Development System—a data management system will be developed to analyze and process local district/provider data generated through the LEA application process, needs assessments and communication with institutions of higher education. The system will include individual district/provider information regarding staffing levels and five-year projections for staffing needs, IHE preparation data, and in-service learning needs assessment data;

- Local Education Agency (LEA)/Providers—New York State has approximately 720 LEAs as well as approximately 41 BOCES and 2 State-operated schools, 14 State- supported schools and 2,200 nonpublic schools, 154 approved private

schools and 319 agencies with approved preschool special education programs and services. In accordance with the LEA application process, each school district will be required to develop a district CSPD that addresses local needs as well as being consistent with goals and objectives established by SETRC and the SEA. District superintendents are responsible for ensuring that appropriate educational programs are provided for nonpublic schools in their district so local CSPDs can include staff development needs for these schools as well. (See Illustration 2)

Procedures and Activities for the Development, Updating, and Implementation of a Plan

New York State's CSPD will address current and projected special education and related service personnel needs including those of leadership personnel through a two-pronged approach that meets the need for in-service and continuing education, as well as preservice education programs. These efforts will be addressed cooperatively among the SED, the LEA, IHEs, and professional associations. The OSES, Division of Program Development (DPD), will remain directly responsible for quality, content and implementation of all CSPD activities. The DPD will administer all components of the CSPD plan with recommendations and guidance from the Advisory Council. The Division of Program Development will also collaborate with the Division of Program Monitoring to identify training priorities based on site reviews and to resolve issues/concerns that arise during the LEA CSPD plan approval process.

The SED will be directly responsible for scheduling and coordinating statewide training across all Specialty Centers. The process will be dependent on the LEA CSPD plan development conducted by local districts/providers and SETRCs. Upon completion of local plans, each SETRC will compile a master list of all training requests. The requests will be forwarded to the SED for analysis and processing. Following review of the requests, the SED will work with existing Specialty Centers to develop a master schedule of training dates, times, locations, and content of training to be developed by the Specialty Centers. It is anticipated that the master schedule will include both regional and district level training. Specialty Center personnel will collaborate with individual SETRC programs in local districts when specific follow-up activities or technical assistance activities are requested.

Selected SETRCs will have enhanced responsibilities to function as Specialty Centers, in addition, certain colleges/universities may be designated as Specialty Centers. The services of Specialty Centers, however, will be accessed by local districts/providers through the regional SETRCs. The SETRC network, therefore, remains the primary access/ coordination

Illustration 2

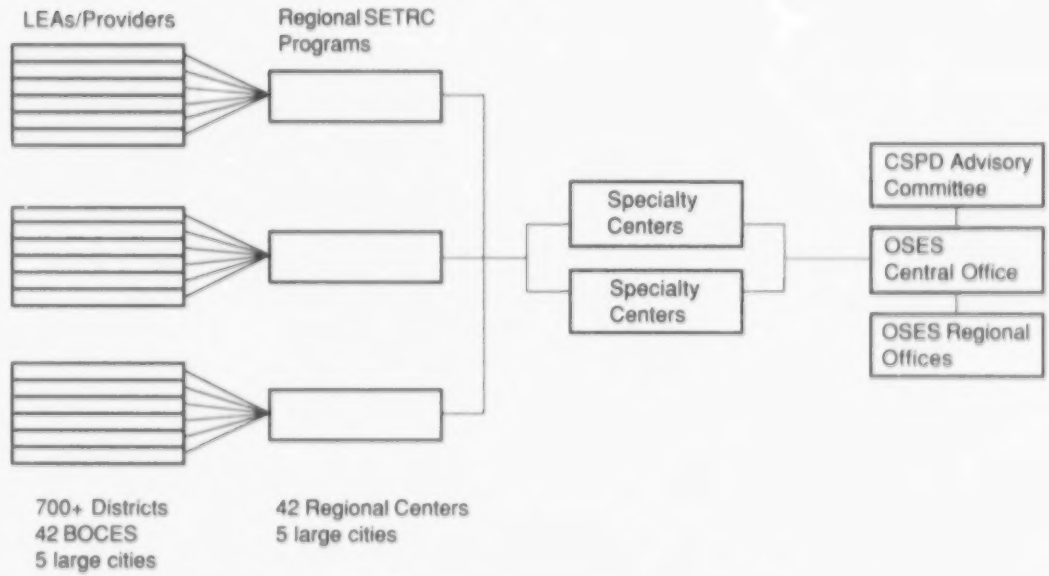
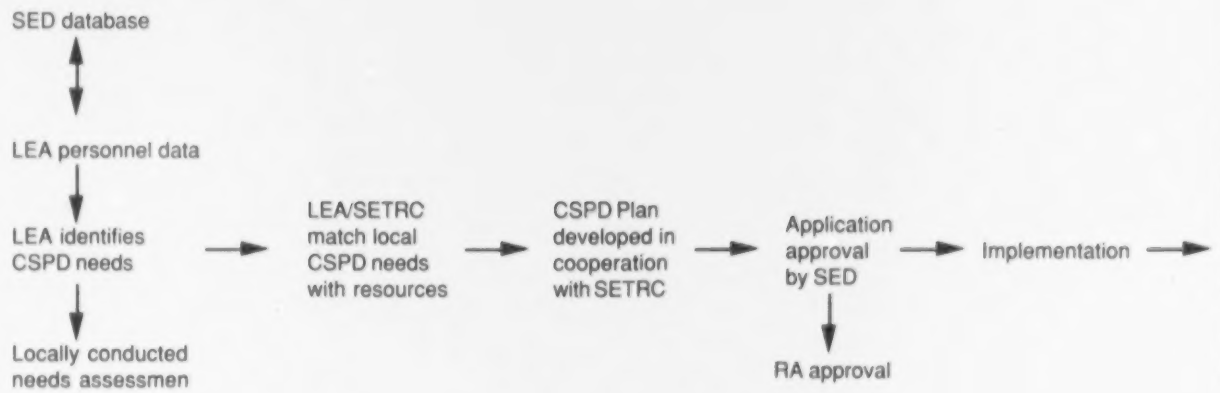


Illustration 3



point for all CSPD activities, including in-service training for personnel development. The SED will significantly reduce direct training as part of the new CSPD strategy in favor of field based Specialty Centers.

In accordance with Federal requirements, the LEA application process for technical assistance and funding includes data collection and a plan to address personnel development needs at the local level. This process has several major steps as follows:

- Annual LEA identification of CSPD needs—each local school district/provider is required to develop a CSPD component annually. The plan will be based on data including:
  - — current and projected special education and related services personnel needs submitted annually to SED in a prescribed electronic format through the Technology Network Ties (TNT) program. The TNT is a SED database used to transmit education related information throughout the State. Until this database is completed, LEAs will submit written personnel reports;
  - — outcomes from a district needs assessment;
  - — recommendations from the regional SETRC;
  - — recommendations from the Regional Associate; and
  - — other SED initiatives for regular education personnel.
- SETRC Role—The SETRC training specialist will meet with each LEA representative to review and analyze the LEA's CSPD. The SETRC representative helps the LEA to determine how to accomplish its goals by drawing from available statewide resources such as SETRC, Specialty Centers and other SED programs. SETRC certification indicates that the planning process has been completed and that SETRC acknowledges their responsibilities as outlined in the plan.
- School District/Provider LEA Application—The CSPD component of the local application for Federal flow-through funds for each district/provider, must identify how each district will take advantage of the State CSPD plan including SETRC, and must be submitted to the appropriate regional office of the OSES for review and approval in order to receive such funding.
- Implementation of district/provider CSPD—Each district/provider must implement its approved plan according to specified schedules and activities. SETRC training specialists will provide trairting as specified in local plans. Statewide training, information dissemination and technical assistance efforts are initiated on an annual cycle beginning in September according to needs identified during the local planning process.
- Evaluation and follow-up—Local districts/providers will develop long-term personnel development initiatives to promote long-term systems change through skills development and practice. Therefore, training programs involving multiple sessions over several months will be promoted. Each SETRC may assist school district personnel to revise plans as needed.
- CSPD updating—Annual CSPD plans may outline a five-year development strategy for the district/provider. It is the responsibility of the LEA to make annual revisions to maintain the relevancy of the plan in consideration of new and emerging personnel needs in the district. The SETRC training specialist will assist with annual revisions as requested. (See Illustration 3)

New York State Initiatives to Enhance the CSPD

The Comprehensive Data Base Management System will be developed by revising/expanding the combined information collected by the HEDS and BEDS offices, thus allowing OSES to analyze the data and do five-year projections regarding staff needs in special education. As part of the effort, the current data collected on these two systems will be reviewed and modified to ensure that the information collected addresses Federal requirements, as well as State needs.

New York State Initiatives

It is anticipated that a Resource Center for the Deaf will be created to provide comprehensive training and technical assistance throughout the State to parents, educational personnel, and CSE/CPSE members regarding students who are deaf or hearing impaired.

Chart 1: Number of Public School Professional Personnel by Professional Field and Certification/Licensure in New York State, 1990–1991

Professional Field	Temporary Certification/ Licensure **	Provisional Certification/ Licensure *	Permanent Certification/ Licensure
School District Administrators	883	1,041	10,218
School Counselor	271	1,234	3,814
School Psychologist	138	494	2,189
School Social Worker	150	482	1,129
Physical Therapist	N/A	N/A	77
Occupational Therapist	N/A	N/A	118
Special Education Teacher	3,043	3,718	13,186
Teacher of the Speech and Hearing Handicapped +	404	779	3,171
Teacher of Blind and Partially Sighted	40	62	352
Teacher of Deaf and Hearing Impaired	92	136	620
Teacher of Mixed Handicapped ***	871	1,621	7,515

* Includes New York City Substitute and Probationary; Buffalo Temporary, Probationary and Provisional; New York State 5-Year Provisional.
** Holds no valid certificate or performs more than 20 percent of service in assignment(s) for which he/she is not certified.
*** These teachers have students with several different disability areas.
\+ This data is currently merged with Speech and Language Pathologist.
Note: Individuals may be counted in more than one field on this table.

Chart 2

THE NUMBER OF SPECIAL EDUCATION GRADUATES OF BACCALAUREATE PROGRAMS IN NEW YORK STATE RECOMMENDED FOR PROVISIONAL CERTIFICATION

1986 THROUGH 1990

Institution	1986	1987	1988	1989	1990
Adelphi University	11	15	8	1	0
Alfred University	4	1	2	1	2
College of New Rochelle	19	10	16	16	9
* College of Mt. St. Vincent/ Manhattan College	3/1	1/1	8/4	6/5	7/7
College of St. Rose	50	49	39	48	51
CUNY Baruch College	9	5	8	10	6
CUNY Brooklyn College	35	35	26	26	14
CUNY City College	6	15	12	16	2
CUNY York College	2	5	5	5	4
CUNY Medgar Evers	0	0	0	1	0
D'Youville College	29	25	8	16	14
Daeman College	11	18	20	22	9
Dominican College	6	11	9	12	4
Dowling College	60	46	47	57	48
* Hobart William Smith/ Keuka College	1/11	7/22	8/18	9/8	6/20
LIU C.W. Post College	21	18	16	4	5
Manhattan College	0	0	0	0	2
* Marist College/Vassar	3/0	8/0	12/0	16/0	12/0
Marymount College	4	3	10	4	4
Marymount Man	2	2	1	1	0
Mercy College	49	49	47	35	26
Molloy College	6	11	7	4	10
Mt. St. Mary College	45	32	30	34	22
Nazareth College	39	49	42	46	41
New York University	10	10	5	12	7
Russell Sage College	21	17	36	16	23
St. Francis College	1	3	2	2	1
St. Johns University	64	62	71	47	29
St. Josephs University	136	106	120	108	95
* Suffolk Campus	1	0	13	1	0
St. Thomas Aquinas	28	33	32	33	28
SUC Brockport	3	1	1	0	1
* SUC Buffalo/SUC Fredonia	163/3	132/3	158/0	163/0	153/2
SUC Geneseo	233	190	152	180	133
SUC Old Westbury	17	15	14	19	18
SUC Plattsburgh	59	61	66	64	45
Syracuse University	27	23	25	18	13
Wagner College	11	4	7	8	10
TOTALS	**1,212**	**1,101**	**1,106**	**1,075**	**888**

* Joint Registered Program

XI. PRIVATE SCHOOLS

Children Placed or Referred by Public Agencies

To the maximum extent appropriate, students with disabilities must be provided special education in the least restrictive setting. (8NYCRR 200.6) The majority of students with disabilities in New York State participate in special education programs and services in their home school district, at a neighboring school district, or are enrolled in the programs of Boards of Cooperative Educational Services (BOCES). If, based on the student's individualized education program (IEP), such placements are not appropriate, school districts may contract for placement in approved private schools. For State reimbursement purposes, the district is required to document all efforts to place a student in a less restrictive setting. (8NYCRR 200.6(h)) The NYSED ensures that all the requirements of Subpart D are met.

Responsibility of State Education Agency

School districts may contract for day placements or residential placements in approved private schools based on the intensity and severity of the school-age student's needs. The district must document that the nature or severity of the school-age student's disability is such that appropriate public facilities for instruction are not available. Placements by local school districts in approved private schools are at no cost to the student's parent. (8NYCRR 200.7(b)(1)) The Individualized Education Program (IEP) must be implemented by the private school, including appropriate programs, related services, testing modifications, adaptive devices, and specialized equipment. A student placed in an approved private school has the same rights as students with disabilities served in public schools. Students with disabilities placed in or referred to a private school by a public agency must be provided special education and related services in conformance to the individualized education program requirements of 34 CPR 300.340 — 300.349. (8NYCRR 200.4 and 200.7) While meetings to review and suggest revision of the IEP may be conducted by the approved private school, the actual review and revision must be conducted by the Committee on Special Education (CSE) of the student's home school district. The ongoing participation of the student's teacher and approved private school representatives is assured by the requirements that such representative be invited to all IEP meetings regarding students with disabilities who attend the approved private school (8NYCRR 200.4(c)(3) and that the student's teacher is a mandated member of both the CSE and the Committee on Preschool Special Education (CPSE).

Section 200.1(d) of the Regulations of the Commissioner of Education defines an approved private school as a private school which conforms with the requirements of Federal and State laws and regulations governing the education of students with disabilities, and which has been approved by the Commissioner for the purpose of contracting with public schools for the instruction of students with disabilities.

For the preschool student, the determination of the appropriate educational placement is based upon individual needs of the preschool child and the identification of an appropriate program and/or service selected from the list of approved public and private preschool programs and services established pursuant to Section 4410 of the New York State Education Law.

Implementation by State Educational Agency

During the 1990-91 school year, there were 154 in-state approved private schools and 28 out-of-state private schools approved by the State Education Department for the purpose of providing special education services for school-age students with disabilities. There are a total of 241 private programs approved for the education of preschool students with disabilities. The standards for approval of private schools for this purpose are specified in Section 200.7 of the Regulations. Staff of the Division of Program Monitoring of the Office for Special Education Services (OSES) monitor approved private schools regarding compliance with State and Federal Laws and regulations pertain-

ing to the education of students with disabilities. Site visits for the purpose of program reviews are scheduled to take place routinely and written reports are completed after each site review.

The OSES provides opportunities for private schools to participate in the development and revision of the State standards which apply to them regarding the education of students with disabilities. The Assistant Commissioner of the Office for Special Education Services meets on a regular basis with a committee of representatives from the private schools to provide a forum to comment on requirements and policies and to discuss issues concerning the education of students with disabilities who attend private school programs. In addition, the Commissioner's Advisory Panel (CAP) includes representatives of approved private schools and representatives of the nonpublic schools as members of the panel. A major function of the CAP is for members to comment on any rules or regulations proposed for issuance by the State regarding the education of students with disabilities.

Children Placed by Parents in a Private School

New York State Education Law enables parents to place a child in a private school at their own expense for the purpose of receiving instruction that is comparable and equivalent to that provided other children of the same grade or level of attainment enrolled in the public schools. The responsibility for ensuring comparability and equivalency of private school instruction rests with the local educational agency in which the child resides. (NY Educ L Sec 4402(2) and (4)) The public agency shall make special education and related services available to children enrolled in private schools by their parents. Private school children with disabilities means children with disabilities enrolled in private schools or facilities other than children with disabilities placed by a public agency.

If a student with a disability has FAPE available and the parents choose to place the child in a private school or facility, the public agency is not required to pay for the student's education at the private school or facility. However, the public school district of the student's district of residence is responsible for ensuring special education programs and services to meet the needs of students with disabilities who, unilaterally placed by their parents, attend private schools if the parents request such services in writing from the district's Board of Education and if the services are also available to those enrolled in the public schools of the district. Such a request is reviewed by the Committee on Special Education in accordance with Section 4402 of the Education Law. If the recommendation of the CSE is not acceptable to the parents, or if the committee fails to make a recommendation within required time periods, the parents may seek appeal under Section 4404 of the Education Law. The school district shall contract with the school district in which the private school attended by the student is located, for the provision of special education services. If the school district's Board of Education refuses to provide such services, any party conceiving himself aggrieved can appeal by petition to the Commissioner. (NY Educ L Sec 3602-c (2)) Disagreements between parents and the public agency regarding the availability of a program appropriate for the child and the question of financial responsibility, are subject to the due process procedures of 34 CFR 300.500 - 300.515.

Parents may also unilaterally elect to provide home instruction for their school-aged child with disabilities pursuant to Section 100.10 of the Regulations. If this decision is made, the parent(s) must notify the district superintendent in writing and develop an individualized home instruction plan (IHIP) for their child that includes what part, if any, of the special education program the parent will provide. If the student has been classified, the CSE must make all or any part of the special education program and related services specified in the student's IEP available to that student at the public school or at a neutral site. The district must provide any specialized instructional materials necessary to enable the child to benefit from special education if such is provided to the child in accordance with an approved IEP. Transportation must also be provided to enable the student to participate in such program and services. The parent is responsible for paying for those services not specified in the IEP and provided by the district. The district may claim aid for providing any of the special education services described in the IEP by filing for excess cost aid on State aid forms. (Field Memo, "Revised Questions and Answers on Home Instruction and Home Instruction Worksheet," May 1991) The State Education Department disseminates copies of applicable standards to approved private schools through the *Private School Application Form* which private schools must submit for approval.

Responsibilities of State Educational Agency

The New York State Education Department ensures through local educational agencies that special education and related services are provided to meet the needs of students with disabilities residing in the jurisdiction of the agency, but enrolled in private schools.

Requirements of 34 CFR 76.651-76.663 of EDGAR

Section 3602-c of the Education Law establishes the practice of dual enrollment for purposes of providing free appropriate public education to students who are unilaterally enrolled in private schools by their parents. A child enrolled in a private school and thought to be in need of special education and related services may be referred to the local educational agency wherein the child resides for purposes of identification, evalua-

tion and, if found to be eligible pursuant to Article 89 of the Education Law, is entitled to a free appropriate public education by the child's school district of residence. These special education programs and services, including transportation to and from the site of the services, are provided by public school personnel at no cost to the parent. Each child with a disability who is unilaterally enrolled by a parent in a private school is guaranteed the right to a free appropriate public education, including procedural safeguards, in accordance with New York State standards.

Each student with a disability, who is enrolled in a private school and receiving free appropriate public education from the local educational agency wherein that child resides on December 1 of any school year, is counted by the public school district for purposes of generating IDEA, Part B funds. The funds so generated are allocated to that local educational agency for use to benefit all eligible children, subject to the priorities specified in 34 CFR 300 and the approval of an application by the New York State Education Department. The dual enrollment provisions and the local education agency application policies, procedures, and assurances ensure compliance with Sections 76.651 through 76.663 of the Education Department General Administrative Regulations (EDGAR) governing the use of Federal funds to benefit students unilaterally enrolled by their parents in private schools and receiving free appropriate public education programs and services from public agencies which are appended to the *State Plan*. Disagreements between parents and the school district regarding the availability of a program appropriate for the child, and the questions of financial responsibility, are subject to the due process procedures under 34 CFR 300.500-300.515.

XII. RECOVERY OF FUNDS

Recovery of Funds

It is the policy of the New York State Education Department to seek recovery of any IDEA, Part B funds made available for services to any child determined to be erroneously classified or otherwise not eligible to be counted. Validation procedures for ensuring the accuracy of the Part B child count include certification by local educational agencies that the count is accurate and submission of the child count to the SED and regional associates of the Division of Program Monitoring.

Random selection of files of individual children sample 10 percent of the children from the register to review files to ensure:

- An IEP was in effect and the child was receiving special education and related services specified on the IEP at the time of the count;
- Evidence that the child had been evaluated and determined to be a child with a disability eligible to receive special education and related services;
- Evidence of enrollment in school at the time of the count; and
- Evidence that the child was not counted under Chapter 1.

The State Education Department verifies child count numbers through procedures regional associates follow when conducting on-site visits. The Department's regional associates verify the child count numbers during site visits to the local educational agency by sampling the agency's register of counted children. In addition, the count is verified by single audit review. When it is determined that an agency has been subgranted funds for ineligible children, the Division of Special Education Fiscal Management notifies the agency that its funding allocation has been reduced and its need to reduce its application budget for the use of reclaimed funds by an appropriate amendment. The LEA will be provided an opportunity to respond to the review and notification of the reduction in funds or repayment of any misspent funds. In the event that reclaimed funds have been expended by the agency, the State Education Department will either reduce the final expenditure reimbursement by the amount misclaimed or request the agency to repay the Department the misspent portion from other than Federal accounts. Any failure by an agency to return misclaimed or misspent funds will be referred to the State's Attorney General for recovery and the agency's status as an eligible recipient will be suspended until the matter is settled. The procedures ensure that the:

- Child count data submitted by the LEAs is accurate;
- SED uses appropriate procedures to validate the accuracy of the count; and
- SED makes appropriate financial adjustments when necessary.

XIII. NOTICE AND OPPORTUNITY FOR HEARING ON LOCAL EDUCATION AGENCY (LEA) APPLICATION

Written notice of pending disapproval of an application or reclamation of available funds will be sent to the applicant for receipt at least 30 days prior to actual disapproval. The notice will contain a statement of the reasons for pending disapproval, or reclamation and corrective actions to be taken. Project related expenditures which have been disapproved shall not be reimbursed using available Federal funds. In the event that the applicant is a State or local educational agency, such notice shall also state that:

- within 30 days of the date of receipt of the notice, the applicant may request a hearing on the record before the Assistant Commissioner of the Office for Special Education Services (OSES), or a designee;
- if requested, OSES shall arrange for such a hearing to be conducted within 30 days of receipt of the request;
- within 10 days following the hearing, the Assistant Commissioner shall issue a written ruling which includes the findings of fact and reasons for either rescinding or sustaining the recommended disapproval; and
- if the action is not rescinded, the applicant may appeal to the United States Secretary of Education, the notice of which must be filed with the Secretary by the applicant within 20 days of the State Education Department's notice of its findings.
- if the Secretary finds that the State Education Department's actions are supported by substantial evidence, the findings of fact of the State Education Department are final; and
- the State Education Department will make available at reasonable times and places to each applicant all records of the agency pertaining to any review or appeal the applicant is conducting including records of other applicants.

Suspension of Approved Applications

The State Education Department may suspend an applicant's authorization to expend Federal funds for cause, subject to the provisions of Section 76.783 of the Education Department General Administrative Regulations and the safeguarding procedures described above for disapproval of such an application.

XIV. ANNUAL EVALUATION

Program effectiveness is evaluated annually by using the following criteria:

- Comprehensive Assessment Report (CAR)—Pursuant to Section 100.2(m) of the Regulations of the Commissioner of Education, annually the superintendent of each school district must submit a CAR to the Board of Education at a public meeting. This requirement provides the Board and the public information (including trends over a three-year period) upon which to review and evaluate student/school performance and to take action when there is evidence that students are not achieving at appropriate levels. Each CAR must include the following (aggregate and male/female) regarding students with disabilities:
  - — the number of diploma candidates during the school year;
  - — the number of candidates who received a local high school diploma pursuant to Section 100.5(a) of the Regulations;
  - — the number of candidates who received a Regents high school diploma pursuant to Section 100.5(a) and (b);
  - — the number of candidates who did not successfully complete course requirements only;
  - — the number of candidates who did not successfully complete State competency test requirements only;
  - — the number who received a high school individualized education program diploma pursuant to Section 100.9 of the Regulations; and
  - — the number who received a local certificate pursuant to Section 100.6 of the Regulations.

The CAR must also include information pertaining to enrollment, annual attendance rate, students who left school, racial/ethnic student distribution, limited English proficiency, average class size, student/support staff ratios, socioeconomic indicators, pupil mobility, and other information which may be required by the Commissioner of Education or school district.

- District Exit Reports—School districts are required to collect data annually and report the numbers of students with disabilities who will no longer be eligible for educational programs. (8NYCRR 200.4) School districts are also required to collect data on students who drop out of school. (NY Educ L Sec 4402)
- Local Boards of Education are required under Section 200.2 of the Regulations to locate, identify, and serve students with disabilities, as well as to report all such data to the Office for Special Education Services (OSES). Data regarding unserved students with disabilities and reasons for deficiencies in services are also required to be reported.
- Local Boards of Education are required under Section 200.2(c)(2) of the Regulations to describe the methods used to evaluate the extent to which the objectives of their special education programs are met. The Division of Program Monitoring evaluates this component of the district plan through monitoring activities. In addition, OSES is examining initiatives which would improve data collection procedures regarding students who move to programs or services which are less restrictive in nature than their current settings.
- Annual Professional Performance Review—Pursuant to Section 100.2(o) of the Regulations, the governing body of each school district and Board of Cooperative Educational Services (BOCES) must ensure that the performance of all professional personnel is reviewed annually. The procedures for such reviews must be approved by the governing body of the school district and be available in the school district office for public review.

Additionally, the Division of Program Monitoring (DPM) reviews school district plans, written policies and procedures, procedures for maintaining a census of students with disabilities, and schedules or methods of providing in-service training to special education staff as required by Section 200.2 of the Regulations. These reviews include evaluating each district's:

- diagnostic screening plan;

- referral procedures;
- evaluation and triennial reevaluation procedures;
- Individualized Education Programs (IEPs) and the procedures for developing them initially and reviewing them at least annually;
- placement procedures and time lines;
- IEP implementation;
- qualifications of instructional and related services professionals;
- confidentiality procedures;
- due process procedures;
- suspension procedures;
- school calendar with times of instruction included; and
- standards to insure equivalency of instruction in special education.

DPM staff also conduct initial reviews of applications for approval of private school-age and all preschool special education programs, as well as subsequent site visit reviews of (conditionally) approved private and preschool special education programs, to ensure that quality programs and services are provided and that the educational and due process rights of children with disabilities and their parents are safeguarded.

XV. DESCRIPTION OF USE OF PART B FUNDS

Policies and Procedures for Use of Part B Funds

The P.L. 94-142 subgrant program is authorized under Section 1411 of Part B of the Individuals with Disabilities Education Act (IDEA, Part B). Under this program the State receives an annual grant award based upon the State's count of students with disabilities ages 3 through 21 years who were receiving special education in schools operated or supported by public agencies on December 1 of the previous year and who were not counted by the State for Federal funding under its P.L. 89-313 subgrant program. The administration of this program is governed by Part 300 of the Code of Federal Regulations.

The P.L. 99-457 subgrant program is authorized under IDEA, Part B, Section 1419. Under this program the State receives a second grant award each year, based upon the number of students with disabilities ages 3 through 5 years who were included in the State's P.L. 94-142 child count of the previous year. The administration of this program is governed by Part 301 of the Code of Federal Regulations. (34 CFR 301)

The single most distinguishing difference between the P.L. 94-142 subgrant program and the P.L. 99-457 subgrant program is that P.L. 94-142 funds may be used to benefit students with disabilities ages birth through 21 years, whereas, the use of P.L. 99-457 funds is limited to benefit only such students ages 3 through 5.

Use of Part B Funds

Federal requirements governing the State's administration of its P.L. 94-142 and P.L. 99-457 subgrant programs are, with few exceptions, identical. These requirements are:

- at least 75 percent of each grant award must be allocated as the flow through entitlement to the public agencies (LEAs) within whose jurisdictions the students who were counted resided at the time of the count;
- LEA entitlement funds are to be allocated equitably to such LEAs, based upon their respective counts of students included in the State's aggregate count; and
- an eligible LEA recipient of IDEA funds is one which:
  - has submitted an application to the Department in substantially approvable form by the date established by the Department;
  - has demonstrated compliance with State and Federal policy governing the education of students with disabilities; and
  - has been determined by the Department to be willing and able to establish and maintain programs of free appropriate public education to meet the special education and related service needs of students with disabilities.

The Department may not allocate IDEA, Part B funds to an LEA which does not meet these eligible recipient criteria. The Department must, in the alternative, arrange for the allocation of these funds for use by other appropriate agencies to meet the needs of eligible students in that LEA.

- Each LEA recipient must submit an application to the State Education Department for approval to expend its entitlement in accordance with the provisions of IDEA. Such an application must:
  - meet the content requirements of 34 CFR Sections 300.220—300.240;
  - demonstrate compliance with all Federal and State program and policy requirements that govern the provision of free appropriate public education to students with disabilities;
  - describe how the recipient will use its entitlement for IDEA purposes, including information assuring the appropriate use of these funds in accordance with IDEA and related Federal regulations; and
  - include any other information the State Education Department may require to carry out its responsibilities under the Act.
- An eligible recipient may, subject to approval of its application by the State Education Department, use its allocation to meet only allowable costs of providing free appropriate pub-

lic education to students with disabilities which (1) are in excess of the costs of providing free public education to all students in that LEA and (2) have not previously been met using local and State funds.

Allocation of Subgrant Program Funds

At least 75 percent of each IDEA, Part B grant award is equitably allocated for use by public school districts wherein the students counted to generate these funds resided at the time of the count, except that such funds generated by preschool-age students, and school-age students served in other than public elementary or secondary schools or programs, are allocated directly for use by the schools of placement rather than to the school district of residence. In the spring of each year, each agency having a particular Federal fund allocation for use during the next school year is provided a notice of that allocation.

Applications Required by October 1 of Each Year

Annually, each public educational agency of the State having direct responsibility for the identification, location, evaluation and the provision of free appropriate public education to students with disabilities residing within the agency's jurisdiction must submit a comprehensive application which meets the minimum content requirements of each subgrant program, including a proposed Federal project budget form FS-10 for each to its subgrant program allocations. This application must be on a form prescribed by the Department and received at the Department no later than October 1 of each year during which funds are available. Agencies other than the public agencies described above which have received a notice of allocation must also submit an application for approval to use that allocation. Such an application must also be on a form prescribed by the Department and received no later than October 1.

Consolidated IDEA Subgrant Options

A consolidated subgrant project is one operated by a school district or Board of Cooperative Educational Service (BOCES) using IDEA, Part B allocations signed over to that district or BOCES by other public educational agencies whose participation in such a project is required or otherwise approved by the State Education Department. Section 1414(c) of IDEA, Part B requires a school district to participate with other agencies in a consolidated project if it is determined by the State Education Department that the school district is (a) not eligible to receive payments because its P.L. 94-142 subgrant allocation is less than $7,500 or (b) is unable or unwilling to establish and maintain programs of sufficient size and scope to effectively meet the needs of students with disabilities. Only the State Education Department may require an agency to enter into consolidated project agreement.

A school district having a P.L. 94-142 subgrant allocation of $7,500 or more may, subject to approval by the State Education Department, participate in a consolidated project administered by another school district or a BOCES only under the following conditions:

- at least one of the participating agencies is required by the Department to enter into a consolidated project agreement;
- it is determined by the Department that the consolidated project is designed to meet the greatest needs of students with disabilities under that district's jurisdiction; and
- the district agrees to "sign over" its entire P.L. 94-142 allocation to the other school district or BOCES administering the consolidated project.

These same rules pertain to consolidated P.L. 99-457 subgrant projects except that there is no minimum P.L. 99-457 subgrant allocation below which a school district is required to enter into a consolidated P.L. 99-457 project agreement.

Rules Governing Expenditure of Federal Fund Allocations:

- Federal funds may not be obligated (encumbered or spent) before the later of the following dates:
  - the date of receipt of the required application at the State Education Department;
  - the effective date of the State's grant award for the program; and
  - the approved beginning date of effect of the project budget or a subsequent amendment;
- Federal funds may not be obligated after the earlier of the following dates:
  - the approved ending date of effect of the proposed project budget; and
  - the effective date of a suspension or termination by the Department of the applicant's authorization to obligate such funds; and
- Federal funds may not be obligated for any purpose without approval by the State Education Department of an application or subsequent budget amendment.

Subgrant Program Budget Amendments (Form FS-10-A)

A FS-10 budget received by the Department may be amended

by the applicant through the submission of a completed FEDERAL OR STATE PROJECT BUDGET AMENDMENT (Form FS-10-A). Reimbursements for expenditures proposed via such an amendment are subject to the same conditions of receipt, review and approval governing the original application. When submitting a budget amendment to substantially change any budget category, narrative information pertaining to changes in the approved project which are related to such proposed change in level of expenditure must be given with the same degree of detail required by the original application.

Notice of Receipt, Review, and Approval Process:

- A Notice of Receipt will be issued to the applicant upon receipt of the application or amendment by the Department. This notice will report the date of receipt and any adjustments to the proposed beginning date which may be required and any problem or concern regarding the amount of funds budgeted compared to the level of funding known to be available to the applicant.
- The Federal Aid Program Unit will conduct a review of the technical merit of the application or amendment and, if necessary, issue a Notice of Incomplete Information to the applicant, indicating all that is needed to complete a review and approval of the application.
- One copy of the application or amendment will be forwarded to the regional Office for Special Education Services (OSES) serving the geographic area where the applicant is located. The appropriate Regional Associate will conduct a review of the application. This review may include directly contacting the applicant to discuss any adjustments which may be necessary in light of the criteria for approval. The Regional Associate will recommend to the Federal Aid Program Unit programmatic approval or disapproval of the application.
- The Federal Aid Program Unit will issue a notice of program office approval or pending disapproval to the applicant. If recommended for approval, the Unit will forward two copies of the proposal to the Department's Office of Educational Finance and Management services to initiate budget approval and issuance of approved payments and reimbursements.

Criteria for Approval of Applications

State Education Department payments or reimbursements to eligible recipients for proposed project expenditures are subject to approval of a project application or amendment received at the Department prior to the date project funds are obligated. While it is not necessary to delay initiation of a project pending receipt of a Notice of Receipt or approval of an application from the Department, funds expended (obligated) for a proposed activity in anticipation of approval under the subgrant program may be reimbursable only if approved by the State Education Department in light of the following criteria:

- The applicant must be in compliance with Federal and State law and regulations governing the education of students with disabilities.
- The proposed expenditure must be made within the approved project period and must be allowable and reasonably necessary to support activities which are directly related to the educational needs of the students to be served and not the needs of the school providing the services.
- The proposed expenditure is to supplement and not supplant (off-set) non-Federal funds used for the costs of special education programs and services to meet the needs of eligible students with disabilities.
- The proposed expenditure may not be illegal, imprudent, extravagant, wasteful, or proposed in an untimely manner without regard to, or coordination with, emerging or established regional or statewide standards and efforts pertaining to the proposed major program purposes, objectives, activities, or purchases described in the application. (See 34 CFR Sections 76.772, 76.580 and 76.581)

Final Expenditure Report (FS-10-F)

Within three months after the ending date of a project, a FINAL EXPENDITURE REPORT (Form FS-10-F) must be submitted reporting the actual expenditure of approved budget items. Form FS-10-F, as well as all other Federal Aid Financial Forms and procedures, may be found in the January 1991 revision of the State Education Department's publication entitled, *Fiscal Guidelines for Federal and State Aided Grants*, a copy of which, if not on file in the applicant's files, may be obtained by calling the Department at (518) 474-4815.

Reallocation of Entitlement Funds in the Absence of Required Applications

Federal subgrant program fund allocations available to an agency who has not submitted an application in substantially approvable form by October 1 will be reclaimed by the Department and reallocated for use by other agencies in accordance with the provisions of IDEA, Part B statutes and regulations. On or about September 1, the Department will notify each agency at risk of losing its allocations due to failure to submit the required application in substantially approvable form by October 1. This notice will prescribe the action needed to be taken by October 1 in order to prevent reclamation and reallocation of entitlement funds for use by other agencies.

Federal Funds for State Administration/Allowable Cost

Each year, no more than 25 per cent of the State's IDEA, Part B grant awards will be used to:

- meet allowable administrative costs incurred directly by the State Education Department in carrying out its responsibilities to (1) develop, implement and monitor implementation of this plan; (2) approve, monitor and evaluate local programs and projects; (3) provide local assistance, leadership and consultative services to local educational agencies with respect to the provision of special education programs and services to students with disabilities, and to meet costs of monitoring and complaint investigations which are in excess of such costs incurred during the fiscal year 1985; and
- provide (1) discretionary support services, including the State's comprehensive system for personnel development, recruitment, and training of impartial hearing officers, public information, parent training activities pertaining to the provision of free appropriate public education to students with disabilities; and (2) ensure financial support, via subgrants, contracts or other arrangements, of direct basic and supplemental programs and services to students with disabilities in need of such services, but which a responsible local educational agency is either unable or unwilling to provide in the public elementary or secondary schools operated or supported by that agency.

Activities of the State Advisory Panel

The State Advisory Panel members function in an advisory capacity to the OSES by addressing the Governor, Legislature, and Commissioner of Education of unmet needs within the State in the education of students with disabilities, by commenting publicly on any rules or regulations proposed for issuance by the Commissioner regarding the education of students with disabilities, and by commenting publicly on the procedures for distribution of discretionary funds. During the June meeting each year the members discuss the main issues to be addressed by the Committee during the next school year. The Executive Committee makes more specific recommendations based on member suggestions and the entire committee formalizes the year's agenda during the Fall meeting. General issues for long-term discussion are planned and subcommittees are established. New issues for the Committees are established annually. Current long-term issues to be covered include program development, preschool, and transition services. The 1992-93 issues include: assistive technology devices, inclusionary programs, interagency activities, and third-party medicaid payments.

Members are reimbursed for all travel expenses. Consultant fees are available should an issue need to be addressed by an individual not representing a State agency. Also, the cost of renting meeting rooms is covered with discretionary funds.

Data and Projections for the Use of IDEA, Part B, Section 611 Funds, FY 91 through FY 95

The tables identified below and presented on the following pages portray New York State's projected distribution and use of IDEA, Part B, Section 611 flow through, discretionary and administrative funds for the period of Fiscal Year 1993 through Fiscal Year 1995. Also presented are actual data pertaining to Fiscal year 1991 for comparison purposes.

Table 1: Distribution of IDEA, Part B, Section 611 Flow Through, Discretionary and Administrative Allowances, Fiscal Years 1990-91 Through 1994-95

Table 2: Use of IDEA, Part B, Section 611 Flow Through Entitlement by Number of Recipients and Type of Application, Fiscal Years 1990-91 Through 1994-95

Table 3: Number of IDEA, Part B, Section 611 Discretionary Support Service Projects, by Project Title, Fiscal Years 1990-91 Through 1994-95

Table 4: Number of State Education Department Personnel Performing IDEA, Part B Administrative and Related Support Services, by Position, Salary Grade, and Major Activity Code(s), Fiscal Years 1990-91 Through 1994-95

Table 1: Distribution of IDEA, Part B, Section 611 Funds, Fiscal Years 1990-91 Through 1994-95

IDEA Part B	Actual FY 1991		Projected FY 1993	FY 1994	FY 1995
Child Count (Prior Year)	266,779		305,000	320,000	320,000
Grant Award (in millions)	$ 91.45		$ 121.39	$ 127.36	$ 127.36
Allocation (in millions)					
Flow Through (min 75%)	$ 68.59		$ 91.04	$ 95.52	$ 95.52
Discretionary (max 20%)	$ 18.29		$ 24.28	$ 25.47	$ 25.47
Administration (max 5%)	$ 4.57		$ 6.07	$ 6.37	$ 6.37

Table 2: Use of IDEA, Part B, Section 611 Entitlements, by Number of Recipients and Type of Application, Fiscal Years 1990-91 Through 1994-95

IDEA Part B	Actual FY 1991	Projected FY 1993	FY 1994	FY 1995
Total Number of LEAs	702	714	714	714
Independent Applications				
Number	618	634	634	634
Percent	88.0	88.8	88.8	88.8
Consolidated Applications				
Number	19	20	20	20
LEAs per Application	4.3	4.0	4.0	4.0
Other Projects				
Approved School	195	326	326	326
Direct Service Projects	0	0	0	0

Table 3: Number of IDEA, Part B, Section 611 Discretionary Support Service Projects, by Project Title or Category, Fiscal Years 1990-91 Through 1994-95

IDEA, Part B Discretionary Project Title/Category	Actual	Projected		
	FY 1991	FY 1993	FY 1994	FY 1995
SETRC (44 Projects)	44	44	44	44
Part 200 Management System Support	13	13	13	13
Part 200 Management System Grants	3	3	3	3
Part 200 Management System Research	2	2	2	2
SEALTA	5	6	7	7
Tech Net Center	1	1	1	1
UFT Grant	1	1	1	1
Helen Keller	1	1	1	1
Recordings for the Blind	1	1	1	1
University Institutes	1	1	1	1
Cultural Diversity Training	0	1	1	1
Parent Training	0	1	1	1
CSE/CPSE Chairpersons Training	0	1	1	1
Effective Classroom Instruction	0	1	1	1
CSPD Coordination	0	0	1	1
Summer Institutes—Consultant Teacher	1	0	0	0
MRI-CSE Training	1	0	0	0
Institutes of Higher Education	1	1	1	1
Community College Project	2	2	1	1
Preparation of Teachers of the Blind and Partially Sighted	2	2	2	0
Transition Activities	5	5	5	5
Statewide Mediation Project	4	43	43	43
Project Future	1	0	0	0
Third Party Reimbursement	1	1	50	0
Innovative Projects for Children with Traumatic Brain Injury	1	4	3	0
Interagency Councils	7	10	15	20
Distance Learning	1	1	0	0
Model Program/Severely Handicapped	1	1	0	0
Translations	1	1	1	1
NYC District 75 Strategic Plan	1	1	1	0
NYS Resource Center for the Visually Impaired	1	1	1	1
NYS Resource Center for the Deaf	0	1	1	1

Table 4: Number of State Education Department Personnel Performing IDEA, Part B, Section 611 Funded Administrative and Related Support Services, by Position, Salary Grade, and Activity Code(s), Fiscal Years 1990-91 Through 1994-95

IDEA, Part B State Administrative Position Short Title (Salary Grade)	IDEA, Part B Allowable Cost Activity Code(s)	Actual	Projected		
		FY 1991	FY 1993	FY 1994	FY 1995
Assistant Commissioner (M-3)	01	1	1	1	1
Division Director (M-5)	01	2	3	3	3
Bureau Chief (M-4)	01	3	3	3	3
Supervisor (28)	01,02,04,05,09	12	12	12	12
Associate (26)	02,03,04,05,09	65	65	65	65
Regent Fellow (NS)	02,03,04,09,10	2	2	2	2
Assistant (22)	02,03,04,05,08,09,10	8	9	9	9
Education Program Assistant (18)	03,04,05,08	5	5	5	5
Senior Accountant (18)	02,06,10	7	7	7	7
Audio/Visual Specialist (15)	03,04,05	1	1	1	1
Educ. Program Aide/Trainee (14)	01,02.03,05,08,10	13	13	13	13
Associate Accountant (25, 23)	02,10	10	10	10	10
Assistant Accountant (14)	02,10	11	11	11	11
Assistant Librarian (14)	02,03,10	1	1	1	1
Principal Stenographer (11)	07	4	4	4	4
Senior Secretarial Support (9)	07	5	5	5	5
Keyboard Specialist (6)	07	49	49	49	49
Support Services Assistant (5)	07	1	1	1	1
Total Positions — All Activities		197	197	197	197
Percentage Paid Under IDEA, Part B — All Activities		98.2	98.2	98.2	98.2

Activity Code

01 Administrative Direction—Activities related to internal program management and supervision which provide general program direction.

02 Monitoring, Evaluation, and Auditing—Activities related to: a) regulatory or enforcement functions, b) technical assistance, c) the administration of grants, either State or Federal, allocated by or through the Education Department, and d) field audits, rate setting analysis, accounting, and bookkeeping functions.

03 Dissemination—Activities related to the distribution of information to the various clientele served by the Department through workshops, exhibits, conferences, newsletters, other publications, and film productions.

04 Application Preparation, Review and Approval—Activities related to the receipt, processing, reading, staff critiquing and filing of proposals for the purpose of approving or disapproving projects. This category includes the development and preparation of State plans, grant applications, and related documents.

05 Training—Activities related to conducting or arranging for in-service or preservice training.

06 Research—Activities related to scientific inquiry including practical experimentation.

07 Support Activities—Activities such as typing, filing, photocopying, etc.

08 Direct Client Services—Activities which provide a direct service to clients such as library reference service.

09 Legislative Activities—Relates to the review and preparation of legislation and to responses to inquiries from the Division of the Budget, the Governor's Office, or the Legislature.

10 Planning and Budget Activities—Relates to the preparation and revision of program plans and the SED budget.

XVI. ADDITIONAL INFORMATION

This section of the State Plan describes the manner in which the New York State Education Department provides direct services to students with disabilities through State-operated schools. In addition, it includes important information which is complementary to that found in other sections of the State Plan in order to ensure a clear understanding of the comprehensiveness and high quality of New York States's standards and procedures for the provision of special education. This section includes: a description of how the State Education Department (SED) provides direct services; information regarding advanced technological methods for maintaining and updating individual and aggregate student data; and the SED complaint procedures to ensure compliance with Federal and State mandates.

Additional Information If the State Educational Agency Provides Direct Service to Students with Disabilities Through State-Operated Schools

The New York State Education Department operates 2 schools for students with severe disabilities: the School for the Blind located in Batavia, New York and the School for the Deaf in Rome, New York. These schools provide education and residential services to students ages 3 through 21 at the School for the Deaf and ages 5 through 21 at the School for the Blind, who are either deaf or blind or have multiple disabilities and are deaf and/or blind.

The Office for Special Education Services (OSES) has established, at the New York State School for the Blind at Batavia, a Resource Center for the Visually Impaired. This center coordinates training and technical assistance throughout the State to parents, educational personnel, local Committees on Special Education (CSE) and Committees on Preschool Special Education (CPSE) members to provide them with the skills and information necessary to meet the needs of students who are visually impaired. The OSES will also establish a similar resource center at the Rome School for the Deaf.

Comparable Services

The continuum of special education programs and services described in Section 200.6 of the Regulations is available to all students with disabilities. Students with severe disabilities, for whom a State-operated school is determined to be the least restrictive placement based on individual educational characteristics, must receive any program(s) or service(s) necessary to effectuate an appropriate individualized education program (IEP). New York State has established a single set of statewide standards for the provision of special education programs and services. Therefore, it is assured that the quantity, quality and manner by which they are provided to students attending either of the State-operated schools is comparable to that of students receiving such programs or services by or through public school districts. Comparability is assured by each school district, through the submission of written statements indicating that all students with disabilities, including those attending State-operated schools, receive special education programs and services which are appropriate to meet individual needs. Comparability is also ensured by periodic compliance reviews completed by staff from the OSES, Division of Program Monitoring (DPM). Compliance reviews similar to reviews conducted in the public agencies include, but are not limited to, the assurances of individual due process rights, referral and evaluation procedures, the appropriate provision of special education programs and services in a manner consistent with each student's IEP, the qualifications of personnel, the length and number of school days, and compliance with Federal and State laws and regulations relating to program accessibility and equal opportunities comparable to services available to nondisabled students. DPM regional staff visit, review, and evaluate programs and services for students with disabilities and provide technical assistance to resolve non-compliance issues and ensure appropriate programs and services. Comparability is also assured with regard to the quality of special education programs and services provided within a State-operated school by standardization of the qualifications for staff appointment, salary schedules and reimbursement of services from the State and local education agencies.

Participation in Regular Education

A full continuum of program, service, and placement options are available for students with disabilities in New York State. The full continuum of services is contained in Section 200.6 of the Regulations of the Commissioner and described in the section of the *State Plan* entitled "Least Restrictive Environment."

The CSE/CPSE determines, based upon the individual needs of the student, the appropriate program, service, and placement options which are specified in the IEP. The options within regular education include:

- regular education with:
  - related services;
  - resource room;
  - consultant teacher services;
  - part-time special class placement;
  - declassification support services; and/or
  - transitional support services.

The number of students with disabilities within each disability category who are served in each type of placement option within the full continuum are described in the LEA application included in the appendix materials cited on pages 1 and 2 of the *State Plan* under Annual Data Report.

Parental Involvement/Individualized Education Program

The New York State Education Department ensures through the local educational agency application process that provision is made for the participation of and consultation with parents or guardians of students with disabilities in meeting its goal to ensure full educational opportunities to all children with disabilities. Additionally, *A New Compact for Learning*, adopted by the Board of Regents of New York State in March of 1992, outlines initiatives that the State and local education agencies are taking to ensure the provision for participation of and consultation with all parents or guardians of students, including those with disabilities.

New York State Telecommunication and Technological Student Information Systems

The New York State Technology Network Ties (TNT) system is a statewide telecommunications network which consists of computers, telephone lines and telecommunication software and hardware developed by the New York State Education Department. This network links school districts, Boards of Cooperative Educational Services (BOCES), libraries, other education institutions, and the SED together for communications, resource sharing, and enhanced access to information and services. TNT network services and technology programs support the teaching/learning environment and improve school district management. There are three components to TNT: Financial Information System, Instructional Component and Student Information System (SIS). SIS, which has many components and is currently under development, will provide management programs to handle achievement testing and instructional management, reporting requirements of Parts 100 and 200 of the Regulations of the Commissioner, scheduling, grade reporting, district information, State reporting, at-risk indicators, transportation, career/vocational, and health/medical information.

The Part 200 Management System is a component of the SIS currently being developed by the SED. It is a comprehensive computer software system designed to support the delivery of special education services. The system software assists LEAs in managing the special education process, collects data, and provides an efficient and effective information system for teachers, parents, administrators, and local, regional, and State personnel. The system maintains detailed educational, diagnostic, and programmatic information specific to a student's regular and special education program. This information is expected to assist in generating IEPs, class lists, State required reports, and other materials to facilitate effective local, regional, and State planning for special education.

XVII. INTERAGENCY AGREEMENTS

The New York State Education Department (SED) is responsible for overseeing the provision of educational services to all students with disabilities who are residents of the State regardless of where they are receiving instruction. This includes those children placed in settings for purposes of family care or custody, health care, and treatment or incarceration. A variety of State agencies provide services for students with disabilities in New York State including the Office of Mental Retardation and Developmental Disabilities (OMRDD), Office of Mental Health (OMH), Department of Health (DOH), Department of Social Services (DSS), Division for Youth (DFY), Department of Correctional Services (DOCS), Division of Substance Abuse Services (DSAS), Division of Alcoholism and Alcohol Abuse (DAAA), the Family Court, and county operated detention facilities.

The specific roles and responsibilities of the SED and other State agencies regarding the payment and provision of appropriate education services for students with disabilities are defined in New York State laws and regulations and through interagency agreements. Below is a summary of key laws and regulations which govern the education of students with disabilities who are served in the programs of other State agencies.

- Section 112 of Education Law—Authorizes the SED to establish and enforce standards for education services and programs for students including special education programs for students with disabilities in full-time residential care in homes or facilities operated or supervised by a State department or agency or political subdivision.
- Part 116 of the Regulations of the Commissioner of Education—Establishes the standards for education programs and services for students in full-time residential care in homes or facilities operated or supervised by a State department or agency or political subdivision.
- Part 118 of the Regulations of the Commissioner of Education—Applies to instructional programs provided to persons under age 21 who have not received a high school diploma and who have been incarcerated in a correctional facility maintained by a county or by the city of New York for 10 or more calendar days or who, in the judgment of the child administrative officer of the correctional facility, can reasonably be expected to be incarcerated for a period of 10 or more calendar days. Such programs are the responsibility of the school district within which the correctional facility is located.
- Article 89 of Education Law - Includes the provision of educational services in a residential facility for the care and treatment of children with disabilities under the jurisdiction of a State agency other than the State Department of Education. It also authorizes school districts to enter into formalized agreements for the provision of transition services in programs such as vocational training programs approved by the SED or other state agencies are allowable. This does not, however, relieve another agency of its responsibility to provide or pay for any transition services that the agency would otherwise provide to eligible students with disabilities.
- Article 81 of Education Law—Ensures that students with disabilities residing in child care institutions are provided an appropriate education and the right to due process of law. Child care institutions include facilities licensed by the DSS serving 13 or more students and residential treatment facilities for children and youth certified by the OMH. This law provides a system for the referral, evaluation and educational placement of those students under the custody of a public agency (e.g., Family Court, the DSS, or the DFY) or admitted to a residential treatment facility who are thought or known to be disabled. These requirements closely parallel the procedures for local school districts concerning the provision of special education services for students with disabilities. Article 81 includes the following key provisions:
  - —establishment of Committees on Special Education (CSEs) in child care institutions;
  - —establishment of procedures for payment of tuition and maintenance for children with disabilities residing in child care institutions through the development of interagency agreements;

— provision of authority to the Commissioner to establish and enforce standards of instruction, personnel qualifications, and other requirements for education services or programs; and
— provision of authority to public agencies and pre-admission certification committees to seek evaluative information from local school districts when placement in a child care institution is being considered for a student who is suspected of having a disability.

- Section 3202 of Education Law—Establishes the right of all resident students, ages 5 through 21, to a free appropriate public education. Through the provisions of this law, the basic right to an education is extended to students who reside in situations outside their home including students in foster care, schools for the mentally retarded, intermediate care facilities for the developmentally disabled, institutions for the care, custody and treatment of students, youth who are incarcerated and students who are homeless. Provisions regarding the programmatic and fiscal responsibilities for the education of the students are contained within this law.

- Part 200 of the Regulations of the Commissioner of Education—Establishes the standards for the education of students with disabilities in New York State. Certain sections of Part 200 pertain specifically to students who are placed in other agency programs.

  — Section 200.1 (ss) defines participating agency as a State or local agency other than the LEA responsible for financially and legally providing transition services to a student with a disability.
  — Secrtion 200.4 (c) and (d) describes the role of participating agencies in the provision of transition services for students with disabilities who are age 15 or older.
  — Section 200.4 (g) describes procedures for requests and completion of evaluative information and program recommendations to CSEs for students being placed in child care institutions and residential treatment facilities.
  — Section 200.11 describes admission to public schools of students residing in hospitals of the OMH and OMRDD or in child care institutions. This regulation assures that those students who can benefit from such instruction are admitted to the schools of the district in which the facility is located.
  — Section 200.14 describes educational services in day treatment programs certified by the OMH for students who are mentally ill and require both mental health services and special education services. Procedures for the education of students in day treatment programs are described.

The SED has also developed interagency agreements between the Department and other State agencies to clarify requirements regarding the provision of education services in programs operated or supervised by these State agencies or concerning the delivery of appropriate education service to students with disabilities. Within the SED, the Office of Vocational and Education Services for Individuals with Disabilities (VESID) has responsibility for the overall coordination of the Department's interagency activities and primary responsibility for the development of interagency agreements. Interagency agreements are developed consistent with the procedures identified in the Department policy, "Process for the Development and Approval of Memorandums of Understanding." In general, interagency agreements identify the roles and responsibilities of each of the agencies in the provision and oversight of education services for students with disabilities and define the specific areas of agreement. The SED has the following interagency agreements currently in effect:

- NYS Education Department and NYS Office of Mental Health
  NYS Education Department and NYS Office of Mental Retardation and Developmental Disabilities
  NYS Education Department and NYS Department of Correctional Services
  NYS Education Department and NYS Division for Youth
  The above agreements were developed with regard to the provision of appropriate education services provided in programs operated or supervised by these agencies.

- NYS Education Department and Office of Mental Retardation and Developmental Disabilities and Governor's Council on Children and Families
  These agreements define participating agencies' fiscal, programmatic and administrative responsibilities regarding the Children's Residential Project (CRP). This is an interagency project for the development and implementation of specialized residential and education programs for students with severe and multiple disabilities.

- NYS Education Department and Department of Social Services
  This agreement defines the requirements for Medicaid reimbursement for the provision of certain related services provided to students with disabilities.

- NYS Education Department and Region II Administration for Children, Youth and Families, Office of Human Development Services, U.S Department of Health, and Human Services (representing Head Start grantees in New York State)
  This agreement defines responsibilities to improve services for students with disabilities ages 3 through 21 years.

The provisions contained within interagency agreements are monitored by the Division of Program Monitoring as a component of the program reviews of education programs operated by the State agencies. Program review guides have been developed specifically for the review of education programs operated by certain state agencies. The collaborative provision of services to students with disabilities by State agencies is also fostered through the New York State Council on Children and Families

of the Executive Department of New York State. The Council on Children and Families identifies problems and deficiencies in services and programs and makes recommendations to resolve issues and for the development of programs. The Council is also responsible for the resolution of disputes between agencies relating to the provision of services to particular students and their families. (Section 444 of Executive Law)

New York State Initiatives to Enhance Standards

New York State agencies with responsibility for serving students with disabilities are committed to providing services in the least restrictive settings. As the State agencies work toward providing intensive services within community-based settings close to students' homes, the New York State Education Department will continue to modify existing or develop additional interagency agreements to clarify responsibilities to assure the provision of education for these students.

The SED policy document *A New Compact for Learning* encourages greater interagency initiative through local collaborative programs for the mutual benefit of overlapping clientele. One such effort of the Office for Special Education Services is the establishment of regional interagency councils. These councils, being developed at various sites throughout the State, will assist local service providers to meet the needs of students with severe disabilities through interagency service planning and development, information sharing, and problem resolution.

XVIII. PERSONNEL STANDARDS

The Board of Regents oversees the quality of services and standards for all professions within New York State. The State Education Department (SED) is responsible for establishing appropriate professional requirements for certifying and/or licensing professionals who work with students with disabilities. Certification and licensure standards and procedures are based on the highest requirements applicable to the profession or discipline in which a person is providing special education or related services as determined through the New York State Education Law (Sections 101, 207, 305, 3004, 6506, 6507, 7603, 7704, 7904, 8206) and the Regulations of the Commissioner of Education (Parts 59, 72, 74, 75, 76, 77, 80, and 200). Profession or discipline means a specific occupational category that: provides special education and related services to children with disabilities; has been established or designated by the State; and has a required scope of responsibility and degree of supervision. The following is a list of personnel who provide special education or related services:

School District Administrator
School Administrator and Supervisor
Teachers of Special Education
Teachers of the Deaf and Hearing Impaired
Teachers of the Blind and Partially Sighted
Teachers of the Speech and Hearing Handicapped
Teachers of Physical Education (Adaptive)
School Psychologists
School Physician
Psychologists
Occupational Therapists
Physical Therapists
Speech Pathologists
Audiologists
Social Workers
Vocational Educators
School Social Workers
Teacher Assistants
School Counselors
School Nursing Professionals
Physician's Assistant

The general requirements for personnel providing special education and related services to students with disabilities who are served by State, local, and private agencies are described below. Additionally, Article 89 of Education Law and Part 200 of the Regulations require that these individuals be appropriately certified and/or licensed based on the applicable professional standards.

Licensed Professionals

Each of the licensed professions is regulated by the NYSED. (NY Educ L Sec 6506) The Board of Regents promulgates all rules, establishes educational requirements, charters schools offering educational programs, and endorses licensure issued by other states or countries. The Board of Regents also establishes standards of conduct and oversees discipline proceedings in the area of the licensed professions. Part 59 of the Regulations describes the following procedures for the licensing of candidates in the recognized professions which may provide special education or related services to students with disabilities:

- Education requirements—An accredited program or a program satisfactory to the SED and determined to be equivalent to an accredited program is required in each of the licensed professions;
- Examinations—An examination developed by the SED, or a separately developed examination as allowed by the SED, is administered to all persons seeking to become licensed professionals. Application must be made for admission to examinations, fees must be paid and admission cards must be issued by the SED;
- Experience—In almost all cases, before a license can be granted, specific time spent in the professional field is required;
- Notification—The SED notifies each candidate of success or failure on the examination. If the candidate has failed, the SED advises that candidate on re-examination procedures; and
- Licensure—Each license is issued by the SED upon review of the applicant to ensure that all requirements are met. Each licensee must register with the SED.

Also, Parts 72, 74-77 and 80 of the Regulations delineate additional requirements for specific professional areas which must be met.

Certification

In order to be employed by a school district, teachers and administrators must be certified. Professional certificates for school administrative and teaching personnel are issued by the Commissioner of Education upon review by the SED of each applicant's credentials and qualifications. Part 80 of the Regulations describes the following procedures for the permanent certification of candidates in school administrative and teaching positions.

Section 80.4 of the Regulations describes the following requirements for the certification of school administrators:

- School District Administrator
  - — Education requirements—An appropriate program of 60 credits of graduate study leading to a master's degree, including 24 credit hours in the field of school administration is required. In addition an internship must be accomplished or may be substituted by one-year, full-time experience as a school administrator or supervisor; and
  - — Experience—In order to be certified as a district wide administrator, the candidate must complete three years as a teacher and/or an administrator, and/or supervisor, and/or pupil personnel service staff member;
- School Administrator and Supervisor
  - — Education—An appropriate program of 30 credits of graduate study leading to a master's degree is required. This program must include 18 credit hours in the field of school administration. In addition, the candidate must complete an administrative internship or substitute one-year, full-time experience in a school administrative position; and
  - — Experience—In order to be certified as a school administrator and supervisor, the candidate must complete three years as a teacher and/or an administrator, and/or supervisor, and/or pupil personnel service staff member. In addition, the candidate must complete an additional 2 years experience in school administration.

To be certified as a special education teacher or as some related service providers, a candidate must complete the general requirements specified in Sections 80.2 and 200.6 of the Regulations which are as follow:

- Teacher
  - — Education—The candidate must complete a registered teacher education program in an institution of higher education that is regionally accredited, registered or approved by the SED. Generally a master's degree is required, including study in an appropriate specialized area for permanent certification;
  - — Experience—In most cases, 2 years of teaching experience is required before permanent certification is granted; and
  - — Statewide examination—A statewide examination has been required of all candidates for the first state certificate. The core battery of the National Teacher Examination (NTE) is administered. Effective September 1995, all teachers will be requested to complete the New York State Teacher Certification Examinations (NYSTCE) program.

Also, Sections 80.3, 80.5-80.10 and 80.15-80.17 require additional criteria in order to become certified as teachers in specific teaching areas, including special education areas. An example of additional requirements for special education teachers are as follow:

> Special Education— 24 semester hours in collegiate study related to the teaching of students with disabilities;
> Deaf and hearing impaired—24 semester hours related to the teaching of students who are deaf and hearing impaired;
> Blind and partially sighted— 24 semester hours of study related to teaching students who are blind and visually impaired; and
> Speech and hearing handicapped—36 semester hours in the study related to the teaching of students who are speech or hearing impaired.

Section 80.33 describes procedures for the appointment of teaching assistants:

- Teaching Assistant
  - — Education—A four-year high school program or its equivalent is required for each candidate. Such study shall be supplemented by training and experience appropriate to the position;
  - — A superintendent of schools must apply to the SED for a temporary, one-year license for a teaching assistant; and
  - — Continuing certificate—This certificate is issued by the SED upon the application of the superintendent of schools. Certification is granted on the basis of the candidate's completion of six semester hours of relevant collegiate study and the experience of one-year as a licensed assistant or certified teacher.

Alternatives to General Procedures

Alternatives to the general licensure and certification procedures are allowed by the SED in certain areas of licensing and certification. These include licensing without examination, certification through individual appraisal of alternative study and experience, and satisfaction of the contractual conditions stipulated in the Interstate Certification Compact. (NY Educ L Sec 3030) and (8NYCRR 80.18) It must be established to the satisfaction of the Commissioner of Education that licensure and/or certification standards are met through these and other alternative procedures.

Uncertified teachers may not be employed by boards of edu-

cation except when no certified teacher is available after extensive and documented recruitment efforts have been made. The superintendent must submit to the State Education Department (SED) an application for temporary license which includes justification statements, a plan for staff development and professional support and evidence that the person has the minimum degree required in the certification area. (8NYCRR 80.18)

A superintendent of schools, provided that the approval of the Commissioner is obtained through various requirements, may assign a teacher to teach a subject not covered by the teacher's certification or licensure for a period not to exceed five classroom hours a week. Extensive and documented recruitment must be conducted to show that no certified or qualified teacher was available. (8NYCRR 80.2)

The information described above is based on current policy and procedures related to the establishment and maintenance of standards to insure that personnel necessary to carry out the purposes of Individuals with Disabilities Education Act, Part B are appropriately and adequately prepared and trained. The SED is currently in the process of reviewing and revising these standards to ensure consistency with highest standards.

New York State, in conjunction with the New England states and the federally funded Regional Laboratory for Educational Improvement of the Northeast and Island (The Regional Lab) have worked together to develop a regional common market for educators in the region. A main component of this effort is the development and implementation of a Northeast Regional Credential (NRC). This credential will enable educators who hold that credential to be employed in the seven participatory states for up to 2 years. Individuals who receive an initial regular certificate from any state in the region can receive, upon application, a NRC. This regional credential, valid for up to 2 years, will allow the individual to immediately secure a teaching position in any of the other six states and then, during the period of the valid regional credential, satisfy any state-specific requirements for certification. Accordingly, Section 80.7 of the Regulations states that a provisional New York State certificate will be issued to an applicant who has completed a program of preparation at an approved institution of higher education or who has attained an initial regular certificate in a state which has contracted with New York pursuant to Section 3030 of Education Law.

These reciprocal agreements apply to teachers providing special education and provide an alternative to assist in achieving an adequate number of teachers to provide services to students with educational disabilities.

New York State Initiatives to Enhance Standards

- NYSED will take the following actions to ensure that teachers of the speech and hearing handicapped are adequately prepared to provide services and will obtain the highest entry requirement in the State according to 34 CFR 300.153(c).
  - NYSED will amend Section 80.6 of the Regulations of the Commissioner of Education to require that all individuals hold a Master's Degree in speech-language pathology as the entry requirement for those who provide speech pathology services to students with disabilities after July 1, 2015. Such regulations would be adopted by the Board of Regents no later than July 1, 2005, to be fully effective as of July 1, 2015.
  - Although NYSED would maintain the two-phase certification process through the year 2015, our goal is to enhance the education program of teachers of the speech and hearing handicapped. Therefore, as an interim step to enhance the preparation of these teachers, NYSED will amend Section 80.6 of the Regulations of the Commissioner of Education to require that individuals obtain a Master's Degree in the field of speech pathology services to qualify for a permanent teaching certificate. As of the year 2000, all individuals graduating with a master's degree in this field would be required to meet these new requirements. Current requirements allow an individual to pursue a program of study in the field of speech-language pathology or a related field, if they have 36 semester hours of undergraduate study in speech. Such regulations would be adopted by the Board of Regents by January 1, 1994, to become effective September 1998.
  - Pursuant to 34CFR 300.153(c), NYSED will notify educational agencies, including school districts and institutions of higher education, and teachers of the speech and hearing handicapped of the aforementioned actions and timeliness to meet the professional requirements for obtaining a valid certificate for providing special education to students with speech impairments.
  - By September 1, 1993, a memorandum will be disseminated statewide to all appropriate individuals. This memorandum will provide information on the proposed revisions to the Master's Degree requirements for candidates pursuing a permanent certificate valid for teaching students with speech and hearing disabilities based on regulations to become effective September 1998. This memorandum will also include information on a proposed action to require a candidate to hold a Master's Degree in speech and language pathology after July 1, 2015, as an entry level certificate.
- During the 1993-1995 State Plan time frame, the Office of Special Education Services will be undertaking a study of the competencies needed of teachers of the speech and hearing handicapped and the population of students they serve within schools. This study will assist SED in determining directions for strengthening current certification standards.
- The SED is reexamining areas of certification to ensure that standards meet the current and emerging needs of students

with educational disabilities. Within this long term project will be a reexamination of special education certification areas to ensure consistency with the highest standards. In identifying the highest requirements in the State, all State statutes and rules of all State agencies applicable to serving children and youth with disabilities must be considered.

- Beginning in September 1993, all teachers of regular education subjects or areas will be required to complete an approved program which prepares them to work effectively with students with disabilities. This requirement fulfills a first phase of activities which reexamine both regular and special certification requirements to assure that regular education teachers are familiar about the needs of students with disabilities and that special education teachers have a working knowledge of regular education content and curriculum.
- OSES will continue to work with the New England Credential Committee to pursue reciprocal agreements regarding certification of special education teachers.

NEW YORK STATE EDUCATION DEPARTMENT
ALBANY, NEW YORK 12234

NON-PROFIT ORG.
U.S. POSTAGE
PAID
PERMIT NO. 930

BEST COPY AVAILABLE